

No. 15445

United States
Court of Appeals
for the Ninth Circuit

PLUMBING AND PIPE FITTING LABOR-
MANAGEMENT RELATIONS TRUST,
et al., Appellants,
vs.

CONDITIONED AIR AND REFRIGERATION
CO., a corporation, et al., Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Northern Division

FILED

MAY 14 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco 4, California,

PAUL K. DOTY,

415 T. W. Patterson Bldg.,
Fresno 21, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court, Southern
District of California, Northern Division

No. 1517—ND

CONDITIONED AIR AND REFRIGERATION
CO., a California corporation; BELL AND
HUGHES, INC., a California corporation;
BAIRD SHEET METAL, a California cor-
poration; EARL GRIFFITH AND JOHN
DYER, a co-partnership doing business under
the name of GRIFFITH AND DYER,
Plaintiffs,

vs.

PLUMBING AND PIPEFITTING LABOR-
MANAGEMENT RELATIONS TRUST;
LOCAL UNION No. 246 OF THE UNITED
ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY OF THE
UNITED STATES AND CANADA; PIPE
TRADES DISTRICT COUNCIL No. 36 OF
THE UNITED ASSOCIATION OF JOUR-
NEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPEFITTING INDUS-
TRY OF THE UNITED STATES AND
CANADA; VALLEY GROUP NEGOTIAT-
ING COMMITTEE; and PAUL L. REEVES,
Defendants.

COMPLAINT FOR INJUNCTION

As and for a first cause of action, plaintiffs allege
as follows:

I.

This action arises under the provisions of Section 302 subsections (a) and (b) of the Labor Management Relations Act, 1947, as amended (hereinafter referred to as LMRA 1947) as hereinafter more fully appears. (29 U.S.C. Section 186.) [2]

II.

Jurisdiction of this action is conferred upon this Court by the provisions of Section 302 subsection (e) LMRA 1947.

III.

Plaintiffs Conditioned Air and Refrigeration Co., Bell and Hughes Inc., Baird Sheet Metal, are corporations organized and existing under and by virtue of the laws of the State of California; Earl Griffith and John Dyer is a co-partnership doing business under the name of Griffith and Dyer.

IV.

Plaintiffs are engaged in an industry affecting commerce within this district, and plaintiffs are employers of employees employed in an industry affecting commerce within the meaning of Section 302 LMRA 1947.

V.

Defendants Plumbing and Pipefitting Labor-Management Relations Trust, hereinafter referred to as "Trust"; Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, hereinafter referred to as "Lo-

cal Union No. 246"; Valley Group Negotiating Committee, hereinafter referred to as "Valley Group"; and Pipe Trades District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, hereinafter referred to as "Pipe Trades", are representatives of employees who are employed in an industry affecting commerce within the meaning of Section 302 LMRA 1947, and said "Trust" and "Local Union No. 246" and "Valley Group" and "Pipe Trades" are representatives of the employees of plaintiffs.

Said "Trust" was organized and established in February 1954. [3]

Defendants "Trust", "Local Union No. 246", "Valley Group" and "Pipe Trades" and each of them maintain their principal offices in Fresno, California, within this district, and the duly authorized officers and agents of each of said defendants are engaged in representing and acting for the employee members of said defendants in Fresno, California, within this district.

Defendant Paul L. Reeves is an officer and managing agent, to wit, Business Manager of "Local Union No. 246", and is an officer and managing agent of "Valley Group" and "Pipe Trades".

VII.

Defendants are attempting to compel plaintiffs to pay and deliver money and other things of value to defendant "Trust", and have threatened to, and will, unless restrained by this Court, cause the

aforesaid employees of plaintiffs to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and other things of value to defendant "Trust".

VIII.

That neither said money nor other thing of value were or are to be used or applied for any of the purposes specified in Section 302 (c) LMRA 1947.

IX.

That said acts of said defendants, unless enjoined and restrained, will cause substantial and irreparable injury to plaintiffs for which no adequate remedy exists at law.

As and for a second, separate and distinct cause of action plaintiffs allege:

I.

Plaintiffs hereby adopt and incorporate by reference thereto as though fully set forth herein all the allegations of paragraphs I to VI, inclusive, and paragraphs VIII and IX of the First Cause of Action set forth herein. [4]

II.

Defendants are attempting to compel plaintiffs to pay and deliver money and other things of value to defendant "Local Union No. 246", and have threatened to, and will, unless restrained by this Court, cause the aforesaid employees of plaintiffs to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and

other things of value to defendant "Local Union No. 246".

As and for a third, separate and distinct cause of action plaintiffs allege:

I.

Plaintiffs hereby adopt and incorporate by reference thereto as though fully set forth herein all the allegations of paragraphs I to VI, inclusive, and paragraphs VIII and IX of the First Cause of Action set forth herein.

II.

Defendants are attempting to compel plaintiffs to pay and deliver money and other things of value to defendant "Valley Group", and have threatened to, and will, unless restrained by this Court, cause the aforesaid employees of plaintiff to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and other things of value to defendant "Valley Group".

As and for a fourth, separate and distinct cause of action plaintiffs allege:

I.

Plaintiffs hereby adopt and incorporate by reference thereto as though fully set forth herein all the allegations of paragraphs I to VI, inclusive, and paragraphs VIII and IX of the First Cause of Action set forth herein. [5]

II.

Defendants are attempting to compel plaintiffs

to pay and deliver money and other things of value to defendant "Pipe Trades", and have threatened to, and will, unless restrained by this Court, cause the aforesaid employees of plaintiff to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and other things of value to defendant "Pipe Trades".

As and for a fifth separate and distinct cause of action against defendants, plaintiffs allege as follows:

I.

Plaintiffs hereby adopt and incorporate by reference thereto as though fully set forth herein all the allegations of the First, Second, Third and Fourth Causes of Action set forth herein.

II.

That pursuant to, and in compliance with, the demands and threats of defendants, plaintiff Conditioned Air And Refrigerator Co. has paid the sum of Ninety-three dollars and twenty-five cents (\$93.25) to defendants since May 1, 1955. Plaintiff Bell and Hughes, Inc. has paid the sum of Three hundred thirty dollars and sixty-seven cents (\$330.67) to defendants since May 1, 1955. Plaintiff Griffith and Dyer has paid the sum of Two hundred sixty-five dollars and twenty-five cents (\$265.25) to defendants since May 1, 1955. Plaintiff Baird Sheet Metal has paid the sum of Twelve dollars and eighty cents (\$12.80) to defendants since May 1, 1955.

Wherefore, plaintiffs pray that defendants be

enjoined and restrained from attempting to cause plaintiffs or any of them to pay any money or thing of value to defendants "Trust", "Local Union No. 246", "Valley Group" or "Pipe Trades", or any of them, and that said "Trust", "Local Union No. 246", "Valley Group" and "Pipe Trades", and each of them, be restrained and enjoined from [6] receiving or accepting any money or thing of value from plaintiffs. That defendants be ordered and directed to repay and return all moneys or things of value paid or delivered to defendants by plaintiffs or received and accepted by defendants from plaintiffs, and for such other relief as to the Court may seem just and proper and for plaintiffs' costs incurred herein.

/s/ ALMON E. ROTH,

/s/ GEORGE O. BAHRs,

/s/ PAUL K. DOTY,

Attorneys for Plaintiffs. [7]

[Endorsed]: Filed Aug. 22, 1955.

[Title of District Court and Cause.]

ANSWER

Comes Now defendant, Plumbing and Pipefitting Labor-Management Relations Foundation, formerly known as Plumbing and Pipefitting Labor Management Relations Trust; Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; Pipe Trades District

Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; and Paul L. Reeves, and jointly and severally answer plaintiff's Complaint for Injunction [8] as follows:

First Defense

1. The Complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

Second Defense

1. Defendants, and each of them, deny the allegations contained in Paragraphs I, II, and IV of the complaint.

2. With respect to Paragraph V of the complaint:

(a) Defendants, and each of them, deny that the Plumbing and Pipefitting Labor Management Relations Foundation is a "representative of employees who are employed in an industry affecting commerce within the meaning of Section 302 L.M.R.A. 1947" (29 U.S.C. 186) or at all.

(b) Defendants, and each of them, admit that Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada is a representative of employees, but deny that as to the employees here involved it is a "representative of employees who are in an industry affecting commerce within the meaning of Section 302 L.M.R.A. 1947" (29 U.S.C. 186) or at all.

(c) Defendants and each of them, admit that Pipe Trades District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada is as to the employees here involved a representative of employees within the meaning of Section 302 L.M.R.A. 1947" (29 U.S.C. 186), and that its predecessor, Valley Group Negotiating Committee, was such a representative, but deny that it is and that its predecessor was as to plaintiff: employees "a representative of employees who are employed in an industry affecting commerce within the meaning of Section 302 L.M.R.A. 1947" (29 U.S.C. 186).

(d) Defendants, and each of them, deny that the [9] duly authorized officers and agents of each of the answering defendants, or any of them, including Paul L. Reeves, are engaged in representing employees of plaintiffs in Fresno, California, within the meaning of Section 302 L.M.R.A. 1947 (29 U.S.C. 186), or at all.

3. Defendants, and each of them, deny the allegations contained in Paragraph VII and VIII of the complaint.

4. Defendants, and each of them, deny the allegations in Paragraph IX.

5. Defendants, and each of them, with respect to the Paragraphs of the complaint incorporated by reference in plaintiff's Second, Third and Fourth causes of action, adopt and incorporate by reference

Paragraphs 1 through 4 of this Second Defense as if set forth in full herein.

6. Defendants, and each of them, with respect to Paragraph II of the plaintiff's Second, Third and Fourth causes of action, deny the allegations in each said Paragraph II in each said cause of action.

7. Defendants, and each of them, with respect to the paragraphs of the complaint incorporated by reference, Paragraph I of plaintiff's Fifth cause of action adopt and incorporate by reference Paragraphs 1 through 6 of this Second Defense as if set forth in full herein.

8. Defendants, and each of them, deny the allegations contained in Paragraph II of plaintiff's Fifth cause of action, and allege the true facts to be that money has been paid by the plaintiffs, and each of them, to Plumbing and Pipe Fitting Labor-Management Relations Foundation under and pursuant to the terms and conditions of Legitimate Collective Bargaining Agreements binding upon plaintiffs, and each of them.

Third Defense

1. That the plaintiffs, and each of them, separately and individually, entered into a Collective Bargaining Agreement [10] with the Valley Group Negotiating Committee dated July 20, 1952; that said Collective Bargaining Agreements provide amongst other things:

“Section 1: Definitions.

“(B) The term ‘Union’ as used in this agreement means the Valley Group Negotiating Committee acting as the agent of Local Unions No. 62, 228, 246, 365, 437, 447, 460, 492, 503, and 607 of the United Association of the Plumbing and Pipe Fitting Industry of the United States and Canada.”

And thereafter:

“Section 4. Recognition of Bargaining Agents
Union Recognized As Collective Bargain-
ing Representative of Employees.

The Employer, Employer Associations and the Individual Employers recognize the Union as the sole and exclusive collective bargaining representative of all employees of the Individual Employers performing work covered by this agreement.”

2. That the plaintiffs, and each of them, separately and individually entered into a collective bargaining agreement with the Valley Group Negotiating Committee dated July 20, 1953, with the exception of the agreement of plaintiff, Baird Sheet Metal, which is dated August 29, 1953.

The said Collective Bargaining Agreements provide amongst other things:

“Section 1: Definitions.

“(B) The term ‘Union’ as used in this agreement means the Valley Group Negotiating Committee acting as the agent of Local Unions

14 *Plumbing & Pipe Fitting, Etc., et al.,*

No. 62, 228, 246, 265, 437, 447, 460, 492, 503, 607 and 662 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.”

And thereafter:

“Section 4: Recognition of Bargaining Agents.
“(A) The Individual Employers recognize the Union as the sole and exclusive collective bargaining representative of all employees [11] of the Individual Employers performing work covered by this Agreement.”

3. That the plaintiffs, and each of them, separately and individually entered into a Collective Bargaining Agreement amending the 1953 Collective Bargaining Agreement last above in Paragraph 2 of this defense referred to.

That said 1954 Amended Collective Bargaining Agreement amending said 1953 Collective Bargaining Agreement did not change the Definition or Recognition Paragraphs set out in Paragraph 2 of this defense.

That said 1954 Amended Collective Bargaining Agreement did provide amongst other things as follows:

“Add Section 15 (a) to Master Contract:

“(A) Where a labor-management set up exists by agreement between the Local Master Plumbers Association, regardless of its name or organization, and a Local Union affiliated with

the Committee requiring that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local, make the required payment or payments."

4. That said 1954 Amended Collective Bargaining Agreement was terminated in the manner and form provided by Section 8 (d) L.M.R.A. 1947 (29 U.S.C. 158) and a new 1955 Collective Bargaining Agreement was negotiated in the manner and form provided by said Section 8 (d) L.M.R.A. 1947, a copy of which is attached hereto, made a part hereof as if set forth in full herein, and marked Exhibit A.

5. Defendant, Pipe Trades District Council No. 36, has requested plaintiffs, and each of them, individually, to execute said agreement in keeping with past practice.

6. Plaintiffs, and each of them, individually, have refused to execute said Collective Bargaining Agreement, solely because of the inclusion therein of "Section 16: Labor Management Relations." [12]

7. Defendant, Pipe Trades District Council No. 36 is prepared and is willing to negotiate with said plaintiff employers concerning the terms and conditions of a collective bargaining agreement; however, Pipe Trades District Council No. 36 as the collective bargaining representative of the employees of plaintiffs, and each of them, covered by the 1952, 1953 Collective Bargaining Agreement and

1954 Amendment to the 1953 Collective Bargaining Agreement is prepared to cause said employees to strike to obtain the inclusion of said Section 16 of Exhibit A in a Collective Bargaining Agreement with said plaintiffs, and each of them.

8. That the Valley Group Negotiating Committee, predecessor to Pipe Trades District Council No. 36, caused the said employees covered by the said 1953 Collective Bargaining Agreement to strike to obtain the 1954 Amended Collective Bargaining Agreement with plaintiffs, and each of them, including a Labor-Management clause, the clause Section 15(a) quoted in Paragraph 3 of this defense.

9. That as a result of said strike said plaintiffs filed with the 20th Region of the National Labor Relations Board an Unfair Labor Practice Charge dated June 6, 1955, and numbered herein 20-CB-404, against defendants Local Union No. 246 and Paul L. Reeves, charging amongst other things a violation of Section 8 (b) 3 L.M.R.A. 1947 (29 U.S.C. 158 (6) 3) i.e. that said defendants by striking to obtain the inclusion of said clause Section 15(a) in said 1954 Amended Collective Bargaining Agreement had refused to bargain collectively with the plaintiffs.

10. That on July 18, 1955, said plaintiffs were notified by the Regional Director of the 20th Region of the National Labor Relations Board that after carefully investigating the charge he was refusing to issue a Complaint.

11. That said subject matter, i.e., a Labor-Man-

agement setup, is a legitimate subject for collective bargaining between [13] employers and employees.

Fourth Defense

1. That on the 9th day of February, 1955, there was created by a trust indenture, in writing, the "Plumbing and Pipe Fitting Labor-Management Relations Trust."

That on the 2nd day of August, 1955, said trust indenture was amended in the manner and form provided for in said trust indenture of February 9, 1955.

That attached hereto and made a part hereof as if set forth in full herein is a copy of the trust indenture of February 9, 1955, and marked Exhibit "B," and a copy of the first and only amendment thereto, dated August 2, 1955, and marked Exhibit "C".

2. That all payments required to be made by employers for hours worked by reason of Section 15(a) of the 1954 Amended Collective Bargaining Agreement not yet executed by plaintiffs, Exhibit "A," are required to be made to said Plumbing and Pipe Fitting Labor-Management Relations Foundation.

3. That the Plumbing and Pipefitting Labor-Management Relations Foundation was created jointly by the Associated Plumbing Contractors of Central California, Inc., a California corporation, an incorporated association of Individual Employers licensed contractors under the laws of the State of California and Individual Employers not mem-

bers of said association, licensed contractors under the laws of the State of California and defendant Local Union No. 246, an unincorporated association, a labor organization.

4. That said Plumbing and Pipe Fitting Labor-Management Relations Foundation, a trust, is a legal entity separate and distinct from its creators, i.e., Trustors, from the representative of the employees here involved, the Individual Employers, the employees of the Individual Employers, the association of Employers, and the Local Union that created it, and the beneficiaries of the [14] trust.

5. That by reason of the fact that the Plumbing and Pipe Fitting Labor-Management Relations Foundation, a trust, is a legal entity, a juridicial personage, separate and apart from plaintiffs and defendants, it is not now and never has been the representative of any employees, including plaintiffs' employees, within the meaning of Section 302 L.M.R.A. 1947 (29 U.S.C. 186) or at all.

Fifth Defense

1. That amongst other things the Foundation is authorized by the trust indenture "to enforce the collective bargaining agreements and the provisions thereof covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada." (Exhibit B).

2. That amongst other things the 1955 Collective Bargaining Agreement, not yet executed by

plaintiffs, provides for a method of arbitration of industrial disputes between employees and Individual Employers, and any of the parties to or covered by the Collective Bargaining Agreement and as a part thereof provides:

“Section 17: Joint Conference Board.

“(A) In those areas in which labor-management set ups exist, such labor-management set up shall function as a Joint Conference Board with all the powers, rights, duties and obligations hereinafter lodged in the Joint Conference Board.”

3. That said arbitration provisions are specifically enforceable under and pursuant to Sections 1280 through 1293 of the Code of Civil Procedure of the State of California by employees and Individual Employers and any of the parties to or covered by the Collective Bargaining Agreement.

4. That by reason of said arbitration provision and others in said trust indenture, Exhibits “B” and “C,” it is not [15] within the power of the trust to act as a representative of any employees, including plaintiffs’ employees within the meaning of Section 302 L.M.R.A. 1947 (29 U.S.C. 186) or at all, and therefore is not now and has not been and cannot be such a representative.

Sixth Defense

1. That the provisions of the 1954 Amended Collective Bargaining Agreement, Section 15 (a) and the provisions of the 1955 Collective Bargaining

Agreement, Section 16, Exhibit "A," not yet executed by plaintiffs, or any of them, are the only provisions requiring payment to the Plumbing and Pipefitting Labor-Management Relations Foundation.

2. That in addition said agreements provide for payments to the employees directly by way of wages, overtime, travel and subsistence. That all said agreement provide for the payment by the employer into a Health and Welfare Trust. That the 1954 Amended Collective Bargaining Agreement provides in addition for payments into a Pension Trust. That the 1955 Collective Bargaining Agreement provides for payment into a Pension Trust, and in addition an Apprentice Training Trust. All such payments are for hours worked by employees of Individual Employers.

3. That no agreement provides for any payment to the Valley Group Negotiating Committee, Pipe Trades District Council No. 36, Local Union No. 246, or the business manager, or any officer, agent or employee of said District Council or Local Union.

4. That no demand has been made on plaintiffs, or any of them, or any other employer at any time prior to the date of this Answer and none is now made, and none will be made by Pipe Trades District Council No. 36, Local Union No. 246, Paul L. Reeves, or any officer, agent or employee of said District Council or Local Union that any employer pay or deliver or agree to pay or deliver, any money or other thing of value to them or any of them.

5. That demand has been made and will be made that [16] plaintiffs and other employers of employees represented by Pipe Trades District Council No. 36 agree to pay and pay for hours worked by such employees, into a trust, to-wit: the Plumbing and Pipefitting Labor-Management Relations Foundation, a trust, such amount for each hour worked as may be negotiated in collective bargaining with plaintiffs, and each of them, and other employers of employees represented by District Council No. 36.

Wherefore, defendants and each of them, pray that plaintiffs' complaint be dismissed and they go hence with their costs and the costs of each of them.

/s/ P. H. McCARTHY, JR.,
Attorney for Defendants, and each
of them.

Acknowledgment of Service Attached. [17]

EXHIBIT "B"

Plumbing and Pipe Fitting Labor-Management Relations Trust

This Trust Agreement, made and enter into this day of February, 1954, by and between Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, a Trustor, hereinafter referred to as "Union" and the Associated Plumbing Contractors of Central

EXHIBIT "B"—(Continued)

California, Inc. and Individual Employers regularly engaged in the plumbing and pipe fitting industry who hold one or more contractor license, C-14, C-16, C-20, C-27, C-36, C-38, C-42, C-57 and C-61 issued by the Contractors' State License Board of California, Trustors, hereinafter referred to as "Employer", recites and provides as follows:

Whereas, Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the Associated Plumbing Contractors of Central California, Inc. and various Individual Employers not members of said Association are desirous of forming and perfecting an organization for the purpose of improving the relations between the employers and employees making up the Plumbing and Pipe Fitting Industry, and the Plumbing and Pipe Fitting Industry and the general public, and to enforce the collective bargaining agreement and the provisions thereof covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, to protect the wages, rates of pay, hours of labor and other conditions of employment of the employees in the Plumbing and Pipe Fitting Industry and to protect the general public from imperfect, improper and unsanitary installations, poor or shoddy materials and poor or improper work and workmanship, and [19]

Whereas, there is presently no effective machin-

EXHIBIT "B"—(Continued)

ery whereby the provisions of applicable collective bargaining agreements can be policed and enforced and whereby the general public can be protected from imperfect, improper and unsanitary installation, poor or shoddy materials or poor or improper work and workmanship, and

Whereas, the absence of such effective machinery is producing chaos in the Plumbing and Pipe Fitting Industry and is endangering the wages, rates of pay, hours of labor and other conditions of employment of the employees and destroying the trust and confidence of the public in the employers and in the plumbing and pipe fitting industry.

Now, Therefore, to correct this situation, to protect the wages, rates of pay, hours of labor and other conditions of employment of the employees, to restore the trust and confidence of the public in the employers and the plumbing and pipe fitting industry, this Trust is created.

Article I.

Section 1. There is hereby created the "Plumbing and Pipe Fitting Labor-Management Relations Trust", hereinafter referred to as "Trust."

Section 2. The Trust shall have its principal office at such place as the Board of Trustees shall from time to time designate.

Article II.

Section 1. The Trust shall be administered by a Board of Trustees which shall consist of five (5)

EXHIBIT "B"—(Continued)

Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. and five (5) Trustees appointed by the Union.

Section 2. The Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. shall be appointed in writing and shall serve at the pleasure of said Associated Plumbing Contractors of Central California, Inc. The Trustees [20] appointed by the Union shall be appointed by the Union in writing and serve at the pleasure of said Union. Each original Trustee shall sign this Trust Agreement or a duplicate thereof, and such signature shall constitute his acceptance of office.

Section 3. The Trustees shall select one of their number to act as Chairman of the Board of Trustees and one to act as Co-Chairman, to serve for such period as the Trustees shall determine. When the Chairman is selected from among the Trustees appointed by the Associated Plumbing Contractors of Central California, Inc., the Co-Chairman shall be selected from the Union appointed Trustees and vice versa.

Section 4. Each Trustee shall serve until his death, resignation or removal from office.

Section 5. Any Trustee may resign at any time by serving written notice of such resignation upon the Chairman and Co-Chairman of the Board of Trustees at least 15 days prior to the date on which such resignation is to be effective.

Section 6. Any Trustee may be removed from his office at any time, for any reason, by the party

EXHIBIT "B"—(Continued)

appointing him, by notice in writing served upon the Chairman and Co-Chairman of the Board of Trustees, with a copy mailed to the Trustee so removed.

Section 7. If any Trustee dies, resigns or is removed from office, a successor Trustee shall be appointed forthwith by the party or parties who appointed the predecessor Trustee, by notice in writing served upon the Chairman and Co-Chairman of the Board of Trustees. The successor Trustee so appointed shall sign this Trust Agreement, or a duplicate thereof, and such signature shall constitute his acceptance of office.

Section 8. Any Trustee who resigns or is removed from office shall forthwith turn over to the Chairman and Co-Chairman of the Board of Trustees at the principal office of the Trust any and all records, books, documents, moneys and other property in his possession or under his control which [21] belong to the Trust or pertain to its administration.

Article III.

Section 1. Each Individual Employer, a member of the Associated Plumbing Contractors of Central California, Inc., and each Individual Employer not a member of the Associated Plumbing Contractors of Central California, Inc. holding one or more said contractor's license C-4, C-16, C-20, C-27, C-36, C-38, C-42, C-57 and C-61 who is signatory to this Trust Instrument or who agrees in any manner to be bound by this Trust Instrument shall pay into

EXHIBIT "B"—(Continued)

this Trust and to the Board of Trustees thereof ten (\$0.10) cents per hour for each hour worked, by each such Individual Employer who works with the tools of the trade while working with the tools of the trade and by each journeyman and apprentice employed by each such Individual Employer on work within the work jurisdiction of the United Association of Journeymen and Apprentices of the Pipe Fitting Industry of the United States and Canada performed within the Counties of Fresno, Madera, Kings and Tulare of the State of California, provided however that the Board of Trustees have the power and authority to extend the territorial coverage of this Trust on such terms and conditions as the Board of Trustees deem proper.

Section 2. This Trust shall consist of all payments required to be made by Section 1 of this Article and any amendment thereof and any agreement between the Union and the Associated Plumbing Contractors of Central California, Inc. or any other employer association or any Individual Employer holding one or more said Contractor's license C-4, C-16, C-20, C-27, C-36, C-38, C-42 and C-61, and all interest, income and other returns thereon of any kind whatsoever.

Section 3. Neither the Employer, any Individual Employer, the Unions, any individual employee nor any other beneficiary shall have any right, title or interest in the Trust other than as specifically provided in this agreement, and no part of said fund [22] shall revert to the Employer or any Individ-

EXHIBIT "B"—(Continued)

ual Employer. Neither the Trust nor any payments to the Trust shall be in any manner liable for or subject to the debts, contracts or liabilities of Employer or Union or of any Individual Employer, or any individual employee.

Section 4. Neither the Employer, nor any officer, agent, employee or committee member of the Employer, shall be liable to make payments into the Trust or be under any other liability to the Trust except to the extent that he may be an Individual Employer required to make payments to the Trust with respect to his own individual operations, or to the extent he may incur liability as a trustee as hereinafter provided. The liability of any Individual Employer to the Trust shall be limited to the payments required by this Trust with respect to his or its individual operations, and in no event shall he or it be liable or responsible for any portion of the payments due from other Individual Employers with respect to the operations of such Individual Employers.

Section 5. Neither the Employer, any Individual Employer, the Union nor any individual employee shall be liable or responsible for any debts, liabilities or obligations of the Trust or the Board of Trustees.

Section 6. Neither the Union, nor any member, officer, agent, employee or committee member of the Union shall be liable to make payments into the Trust or be under any other liability to the Trust except to the extent that he may incur liability as

EXHIBIT "B"—(Continued)

an Individual Employer or as a trustee as herein provided, or both.

Article IV.

Section 1. Subject only to the limitations hereinafter set out the Board of Trustees are authorized to and shall have the power to pay out the assets of this Trust to any person, firm, corporation, association whether incorporated or unincorporated or trust at their sole and exclusive discretion for the general [23] welfare of the Plumbing and Pipe Fitting Industry and without in any way limiting the foregoing for the purpose of improving the relations between employers and employees making up the Plumbing and Pipe Fitting Industry, and the general public and to protect the wages, rates of pay, hours of labor, and other conditions of employment of the employees in the Plumbing and Pipe Fitting Industry, to protect the general public from imperfect, improper and unsanitary installations, poor or shoddy materials and poor or improper work and workmanship, to enforce the collective bargaining agreements and the provisions thereof covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

Section 2. The Board of Trustees shall also have the power to demand, collect, receive and hold all payments of money to be paid or paid by the Individual Employer, in accordance with this Trust and any other agreement. Said payments shall be due

EXHIBIT "B"—(Continued)

and payable at such place or places, at such times and in such installments as the Board shall from time to time direct. Each payment shall be accompanied by a statement in such form as the Board of Trustees may require.

Section 3. The Board of Trustees shall also have the right at all reasonable times through its officers, agents, servants and employees authorized and directed so to do to examine the books and accounts of all Individual Employers required by this Trust Agreement or any other agreement to make payments into this Trust.

Section 4. The Board of Trustees shall also have the power to enforce the payment of payments to the Trust by Individual Employers under the terms of this Trust or under any other promise to make such payments. If any Individual Employer defaults in the making of such payments and if the Board of Trustees consults legal counsel with respect thereto, or files any suit or [24] claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board of Trustees in connection with such default.

Section 5. The Board of Trustees shall also have power:

(A) To establish and accumulate such reserve funds as may be necessary to provide for administration expenses and other proper obligations of the Trust.

EXHIBIT "B"—(Continued)

(B) To employ such executive, administrative, accounting, clerical, secretarial and legal personnel and other employees and assistants, as may be necessary in connection with the carrying out of the Trust and to pay or cause to be paid, out of the Trust the compensation and expenses of such personnel and assistants, the cost of office space, furnishings and supplies and other expenses of the Trust.

(C) To consult with and secure the advice of legal counsel on any question of fact or law arising in connection with the carrying out of the Trust, and to employ legal counsel in connection with suits or claims by or against the Board of Trustees or the Trust with respect to the Trust, and to pay the reasonable cost of such legal services from the Trust.

(D) To incur and pay out of the Trust any other expense reasonably incidental to the establishment and administration of the Trust.

(E) To invest and reinvest such portion of the Trust as is not required for current expenditures and charges.

Section 6. The Board of Trustees shall deposit all moneys received by them in such bank or banks as they may select for that purpose. All withdrawals of moneys from such bank or banks shall be made only by check, signed by a person or persons authorized by the Board of Trustees to sign and countersign.

Section 7. The Board of Trustees shall by reso-

EXHIBIT "B"—(Continued)

lution duly adopted, provide for fidelity bonds with such companies and in [25] such amounts as they may determine, for Trustees or other persons who shall be authorized to receive or withdraw money from or for the Trust. The cost of such bonds shall be a proper charge against the Trust.

Section 8. The books of account and records of the Board of Trustees, including the books of account and records pertaining to the Trust, shall be audited at least once each year by a qualified Public Accountant or Certified Public Accountant licensed under the laws of the State of California and selected by the Board of Trustees. The Board of Trustees shall also make all other reports required by law. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Trust and at such other suitable place as the Board of Trustees may designate from time to time. Copies of such statement shall be delivered to the Employer, the Union and each Trustee within five days after the statement is prepared. The expense of such audit shall be borne by the Trust.

Section 9. The Board of Trustees has no authority or power to engage or attempt to engage in any "Prohibited Transaction" as defined in Section 23736.1 of the Revenue and Taxation Code of the State of California.

Article V.

Section 1. The Board of Trustees shall appoint

EXHIBIT "B"—(Continued)

a secretary who shall keep minutes of all meetings and records of all proceedings and acts of the Board of Trustees. The minutes shall be signed by the Chairman and Co-Chairman of the Board.

Section 2. The Board of Trustees shall determine the time and place for regular periodic meetings of the Board of Trustees, with or without notice as the Board may from time to time determine. Either the Chairman or the Co-Chairman, or any two members of the Board of Trustees, may call a meeting of the Board of Trustees giving written notice to all other trustees of the time [26] and place of such meeting mailed at least four calendar days before the date set for the meeting.

Section 3. To constitute a quorum at any regular or special meeting of the Board of Trustees, there must be present at least three (3) of the total number of Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. on the Board of Trustees and three (3) of the total number of Union appointed Trustees on the Board of Trustees. In the determination of any matter coming before the Board of Trustees for consideration, the Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. shall have one vote, as a group or unit and not otherwise, and the Union appointed Trustee shall have one vote, as a group or unit and not otherwise. The vote of each group or unit shall be controlled by a majority within such group or unit.

Section 4. All meetings of the Board of Trustees

EXHIBIT "B"—(Continued)

shall be held at the principal office of the Trust unless another place is designated from time to time by the Board of Trustees.

Section 5. The Board of Trustees may act through a committee or committees appointed by them from time to time. Each such committee shall be composed of an equal number of Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. and the Union and shall consist of not less than two Trustees.

Section 6. Upon any matter which may properly come before the Board of Trustees, it may act in writing without a meeting, provided such writing is signed by three (3) of the Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. and three (3) of the Union appointed Trustees.

Article VI

Section 1. No party dealing with the Board of Trustees, or any of them, shall be obligated to see to the application of any moneys or property of the Trust, or to see that the terms of this [27] Agreement have been complied with, or to inquire as to the necessity or expediency of any act of the Board of Trustees. Every instrument executed by the Board of Trustees, or by its direction, shall be conclusive in favor of every person who relies on it, that:

A. At the time of the delivery of the instrument this Trust Agreement was in full force and effect.

EXHIBIT "B"—(Continued)

B. The instrument was executed in accordance with the terms and conditions of this Agreement.

C. The Board of Trustees was duly authorized to execute the instrument or direct its execution.

Section 2. The duties, responsibilities, liabilities and disabilities of the Board of Trustees or any Trustee shall be determined solely by the express provisions of this Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied.

Section 3.

(A) The Board of Trustees shall incur no liability in acting upon any papers, documents, data or information believed by it to be genuine. The Board of Trustees shall incur no liability for any act based upon an opinion of legal counsel.

(B) The Board of Trustees may delegate any of its ministerial powers or duties to any agent or employee.

(C) A trustee shall be liable only for wilful misconduct. No trustee shall be liable for the act or omission of any other trustee. The Trust shall exonerate, reimburse and save harmless the Board of Trustees, individually and collectively, against any and all expenses and liabilities arising out of the trusteeship, except (as to the individual trustee or trustees directly involved) for liabilities arising out of wilful misconduct.

(D) The Board of Trustees shall not be liable for the acts or omissions of the Employer or any Individual Employer signatory hereto, or the Union signatory hereto.

EXHIBIT "B"—(Continued)

Section 4. Neither the Employer, the Individual Employers, the Union nor any of the Trustees shall be responsible or liable for: [28]

(A) The validity of this Trust Agreement.

(B) The making or retention of any deposit or investment of the Trust or any portion thereof, or the disposition of any such investment, or for any loss or diminution of the Trust, except, as to the particular person involved, such loss as may be due to wilful misconduct of such person.

Section 5. Neither the Employer, any Employer association or Individual Employer represented by Employer, any employer representative nor the Union or any Union Representative or member or employee represented by the Union shall be liable in any respect for any of the obligations of the Board of Trustees because any Trustee member or members are in any way associated with any such Employer, Employer Association, Individual Employer or Union.

Section 6. The Trustees shall be reimbursed out of the Trust for expenses incurred by them in attending meetings or in the performance of any other duty or act pursuant to this Agreement in such amount as the Board of Trustees may from time to time determine. No Trustee shall receive any fee for his services as a Trustee, provided however, that nothing herein contained to the contrary shall prevent or impede the employment by the Board of Trustees of any Trustee or the payment of any sum to or for any Trustee for services other than as Trustee.

EXHIBIT "B"—(Continued)

Article VII.

Section 1. Any Individual Employer who is not a member of Associated Plumbing Contractors of Central California, Inc. or signatory hereto may become a party to this Agreement in such manner as the Board of Trustees may from time to time determine.

Section 2. Upon becoming a party to this Agreement, any such Individual Employer assumes all of the obligations imposed by the agreement upon the Individual Employer, is entitled to all rights [29] under the agreements and is otherwise subject to it in all respects.

Article VIII.

Section 1. Any notice required to be given under the terms of this Agreement shall be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at his last known address as shown in the records of the Trust, or if sent by wire to such person at said last known address.

Section 2. This Agreement shall be binding upon the heirs, executors, administrators, successors, purchasers and assigns of the Employer, any Individual Employer, the Union and the Board of Trustees.

Section 3. All questions pertaining to this Agreement, the Trust and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

EXHIBIT "B"—(Continued)

Section 4. If any provision of this Trust Agreement, or any step in the administration of the Trust is finally held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the agreement, unless such illegality or invalidity prevents accomplishment of all of the objectives and purposes of the agreement. In the event of any such holding, the appropriate parties will adopt a valid provision to take the place of the provision declared illegal or invalid.

Article IX.

Without limitation of the general authority herein granted, the Board of Trustees may agree to do or do any one or more of the following:

(A) Direct that all or any part of the assets of this Trust be paid into a joint trust account, to be known as the Valley Group Plumbing and Pipe Fitting Industry Labor-Management Relations [30] Trust, for such period or periods as the Board of Trustees may specify by resolution from time to time.

(B) Establish a Board of Administrative Trustees, consisting of an equal number of Trustees appointed by the Plumbing Contractors Association and Union appointed Trustees selected from among the Trustees of the participating trusts, and delegate and grant to such administrative Board all or any portion of the powers and duties of the Board of Trustees established by this Trust Agreement.

EXHIBIT "B"—(Continued)

The responsibilities and liabilities of the members of the Administrative Board with respect to said joint arrangement shall be identical with the responsibilities and liabilities of the Trustees appointed pursuant to this Agreement.

(C) Amend, modify or terminate any such joint arrangement. Such amendment, modification or termination may be made at any time, and from time to time, subject to any restriction imposed by the agreement establishing the joint arrangement and any contractual commitments made by the Board of Administrative Trustees.

(D) Incorporate by reference any one or more of the provisions of this Agreement into the agreement establishing such joint arrangement.

Article X.

Section 1. The provisions of this Trust Agreement may be amended or modified at any time, or from time to time by mutual agreement between the Union and the Associated Plumbing Contractors of Central California, Inc.

Section 2. This Agreement shall be effective as of March 1, 1954.

Section 3. In the event this Trust shall terminate for any reason, the funds in the hands of the Trustees shall be expended for the purposes herein provided for or delivered to any organization [31] organized for any or all of the purposes for which this Trust is organized.

DATED: 9th day of February, 1954.FOR THE EMPLOYER:

ASSOCIATED PLUMBING CONTRACTORS
OF CENTRAL CALIFORNIA, INC.
300 BLACKSTONE
FRESNO, CALIFORNIA

Wesley Newman

Employer
Trustees

Maed ~~1954~~
Lawrence Young
Donald G. Smith
Robert F. Clardy
L. J. ~~1954~~

FOR THE UNION

Plumbers & Pipefitters L. A. 246
By Paul L. Revels
E. J. Shipman
Phil F. Jones
Union

Trustees
Bruce M. Chapman
L. D. Turner
Paul L. Revels

IndividualEmployers

Landley & Harty
P. M. Kempf
L. J. West
W. J. Goeddel
Cook Plumbing Co.
New Han
Harry A. Fisher
Frank, McLean Inc. by
Lawrence Turner

Modern Plumbing & Heating Co.
by Donald E. Turner
H. Walter Napeweg
W. J. Newman B. L. Newman
Bjore Plumbing
by Jack Wiegand
Dean B. Driscoll

-11-

Trans Plumbing & Heating Co.
Master's Plumbing
DONALD E. TURNER
W. J. West
W. J. Goeddel
Cook Plumbing Co.
New Han

Cook Plumbing Co.
L. B. Kammerer
P. M. Kempf
Triangle Plb. Co.
By Jack Turner

Spaul Plumbing Co.
By Jack Turner
Butler Plumbing
John Boyegian
Service Plumbing Shop
By Paul J. Hillman

11/15/1915
By J. H. H. H.

By *W. H. Gardner*

Seena Plumbing Shop
By P. W. McKelvey

By A. L. C. J. M.

Lucie Walker

Keller Plumbing Co.

Wm. Hays Climbing & Hauling Co.

Wm. - K. Hayes

Best Bunting Co

Mr. D. Crozier

They are

Wm Rogers—

Bratt P'ly & Sheet Metal Shop

By *Sam. J. B. L.*

Blacks Pkby & S.W.C.

by Anna L. Henry

Chad Lewis

Malvin A. Nelson

Carter & Sons

Robert

H. S. Carter
G. W. Plumberg Shop -

See next page.

Quercus Bros June 3. 54

3rd Geo. A. Owens.

*John James Holmes
to George H. Frame
June 28, 1959*

By Wm. H. France

28, 1959



EXHIBIT "C"

First Amendment to Plumbing and Pipe Fitting Labor-Management Relations Trust

It is hereby mutually understood and agreed this 2nd day of August, 1955 that the Trust Agreement, made and entered into the 9th day of February, 1954, by and between Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, a Trustor, hereinafter referred to as "Union" and the Associated Plumbing Contractors of Central California, Inc. and Individual Employers regularly engaged in the plumbing and pipe fitting industry who hold one or more contractor license, C-4, C-16, C-20, C-27, C-36, C-38, C-42, C-57 and C-61 issued by the Contractors' State License Board of California, Trustors, hereinafter referred to as "Employer", pursuant to the provisions of Section 1, Article X of said trust instrument creating the "Plumbing and Pipe Fitting Labor-Management Relations Trust" be and the same is hereby amended as follows, to-wit:

1. Section 1 of Article I is deleted and there is substituted in the place and stead thereof, the following:

Article I.

Section 1. There is hereby created the "Plumbing and Pipe Fitting Labor-Management Relations Foundation", hereinafter referred to as "Trust".

2. Section 1 of Article II is deleted and there is substituted in the place and stead thereof, the following: [34]

Article II.

Section 1. The Trust shall be administered by a Board of Trustees which shall consist of six (6) Trustees appointed by the Associated Plumbing Contractors of Central California, Inc. and six (6) Trustees appointed by the Union.

3. Article VI (A) is added between Article VI and Article VII, reading as follows:

Article VI (A)

Arbitration

Section 1. In the event that the Board deadlocks on any matter subject to determination by the Board, the Trustees shall within five (5) calendar days thereafter agree upon a neutral person to serve as an impartial umpire to decide the dispute.

(A) By mutual agreement of the Trustees the dispute may be submitted to a Board of Arbitration consisting of the umpire and an equal number of representatives from each respective Trustee group. If such is done, the decision of a majority of this Board of Arbitration shall be final and binding upon each Trustee, the Board, the Union, the Association, Individual Employers and beneficiaries of this Agreement.

In the absence of such mutual agreement the dispute shall be submitted to the Impartial Umpire and the decision of the Impartial Umpire shall be final and binding upon each Trustee, the Board,

the Union, the Association, Individual Employers and the beneficiaries of this Agreement.

(B) Any matter in dispute and to be arbitrated shall be presented in writing to the Board of Arbitration or the Impartial Umpire, as the case may be.

If the Board of Trustees cannot agree upon a joint statement presenting said matter to arbitration, each group of Trustees shall prepare and state in writing their version of the dispute and the question or questions involved within five (5) calendar days after said disagreement.

In making its or his decision, the Board of Arbitration or Impartial Umpire shall be bound by the provisions of this Agreement, and the applicable [35] collective bargaining agreement, and shall have no authority to alter or amend the terms of any thereof.

The decision of the Board of Arbitration or the Impartial Umpire, as the case may be, shall be rendered in writing within ten (10) calendar days after the submission of the dispute for decision.

All other matters of procedure shall be as determined by the Impartial Umpire.

Section 2. If no agreement on an Impartial Umpire is reached within five (5) calendar days, or if the Impartial Umpire having been agreed upon, the dispute is not resolved in the manner and within the time provided or within such further time as the Board of Trustees may allow for either such purpose, on petition of either group of Trustees, an Impartial Umpire shall be appointed by

the United States District Court for the Southern District of California, Northern Division.

Section 3. No matter which is subject to arbitration under this Article, i.e. the administration of the Trust shall be subject to the grievance procedure or any other arbitration procedure provided in any collective bargaining agreement. No other matter subject to or excluded from the grievance procedure of any collective bargaining agreement shall be subject to arbitration under this Article.

Dated: This 2nd day of August, 1955.

For the Union: Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada,

By /s/ Paul L. Reeves.

For the Employer: Associated Plumbing Contractors of Central California, Inc.,

By /s/ A. W. Grenfell. [36]

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto for purposes of plaintiffs' and defendants' motions for summary judgment:

1. That during the calendar year 1955 plaintiff employers made direct purchases of goods and materials from outside the [37] State of California in the amounts set opposite their names. Plaintiffs made purchases in California of goods and materials originating outside the State of California in the amounts set opposite their names; and plaintiffs furnished services and materials to firms engaged in commerce in the amounts set opposite their names, to wit:

	Direct	Indirect	
	Purchases	Purchases	Services
Baird Sheet Metal Works	\$240,683.24	\$29,389.00	\$10,919.29
Bell and Hughes	127,472.19	68,109.92	46,372.66
Conditioned Air	213,351.25	199,589.16	45,681.06
Griffith-Dyer	161,464.15	47,032.06	49,018.24

2. That plaintiffs and each of them, separately and individually, entered into a collective bargaining agreement entitled "Master Contract of the Valley Group Negotiating Committee" dated July 20, 1952, a copy of which said agreement is attached hereto and made a part hereof as Exhibit "A".

3. That plaintiffs and each of them, separately and individually, entered into a collective bargaining agreement entitled, "Master Contract of the Valley Group Negotiating Committee", which said contract was dated July 20, 1953, with the exception of the plaintiff Baird Sheet Metal Works, the contract for which is dated August 29, 1953. A copy of said collective bargaining agreement is at-

tached hereto and made a part hereof as Exhibit "B".

4. That on or about the 9th day of February, 1954, Associated Plumbing Contractors of Central California, Inc., a California corporation, an incorporated association of individual employers licensed contractors under the laws of the State of California, and certain individual employers licensed contractors under the laws of the State of California, and defendant Local Union No. 246, an unincorporated association, a labor organization, made and entered into a trust indenture in writing [38] entitled, "Plumbing and Pipe Fitting Labor-Management Relations Trust". That on or about the second day of August 1955 the name of said trust was, by amendment, changed to "Plumbing and Pipe Fitting Labor-Management Relations Foundation". That Exhibit "B" attached to defendants' answer is a true copy of said trust indenture.

That on the second day of August said trust indenture was amended by the parties thereto. That Exhibit "C" attached to defendants' answer is a true copy of said amendment. That both said trust instrument and said amendment are by this reference incorporated herein.

5. That in or about the month of April 1954 Valley Group Negotiating Committee requested and demanded that plaintiffs sign a collective bargaining agreement entitled, "Agreement Amending Master Contract of the Valley Group Negotiating Committee, dated July 1953." That a copy of said

collective bargaining agreement is attached hereto and made a part hereof as Exhibit "C". That plaintiffs and each of them refused to sign said collective bargaining agreement, to wit, Exhibit "C", attached hereto, and in or about the month of May, 1955, Valley Group Negotiating Committee caused the employees of plaintiffs to strike, and said employees of plaintiffs did thereupon strike until plaintiffs and each of them signed and executed said collective bargaining agreement. That plaintiffs and each of them individually executed said collective bargaining agreement, to wit, Exhibit "C", attached hereto, in or about May 1955. That plaintiffs and each of them have made payments to said trust, to wit, Exhibits "B" and "C" attached to defendants' answer, in the amounts set forth in plaintiffs' complaint on file herein, but plaintiffs have refused to pay and do refuse to pay any further sums to said trust under said agreement.

6. That as a result of said strike said plaintiffs filed with the Twentieth Region of the National Labor Relations Board an Unfair Labor Practice Charge dated June 6, 1955, and numbered [39] herein 20-CB-404 against defendants Local Union No. 246 and Paul L. Reeves, charging amongst other things a violation of Section 8 (b) (3) L.M.R.A. 1947 (29 U.S.C. 158 (6) 3) i.e., that said defendants by striking to obtain the inclusion of said clause Section 15 (a) in said 1954 Amended Collective Bargaining Agreement had refused to bargain collectively with the plaintiffs.

7. That on July 18, 1955, said plaintiffs were

notified by the Regional Director of the Twentieth Region of the National Labor Relations Board that after carefully investigating the charge he was refusing to issue a complaint.

8. That said 1954 Amended Collective Bargaining Agreement was terminated in the manner and form provided by Section 8 (d) L.M.R.A. 1947 (29 U.S.C. 158) and a new 1955 Collective Bargaining Agreement was negotiated in the manner and form provided by said Section 8 (d) L.M.R.A. 1947, a copy of which as Exhibit "A" is attached to defendants' answer.

9. Defendant Pipe Trades District Council No. 36 has requested plaintiffs and each of them individually to sign and execute a collective bargaining agreement in the form of Exhibit "A" attached to defendants' answer. Plaintiffs and each of them individually have refused to execute said collective bargaining agreement and to pay into said trust any of the sums specified in said agreement in accordance with the terms of said agreement.

10. Defendant, Pipe Trades District Council No. 36 is prepared and is willing to negotiate with said plaintiff employers concerning the terms and conditions of a collective bargaining agreement; however, Pipe Trades District Council No. 36 is prepared to cause the employees of plaintiffs to strike to obtain the inclusion of said Section 16 of Exhibit "A" attached to defendants' answer in a collective bargaining agreement with said plaintiffs, and each of them. [40]

11. That all payments required to be made by employers for hours worked in the Counties of

Fresno, Tulare, Madera and Kings by reason of Section 15 (a) of the 1954 Amended Collective Bargaining Agreement and Section 16 of the Collective Bargaining Agreement not yet executed by plaintiffs, Exhibit "A" attached to defendants' answer, are required to be made to said Plumbing and Pipe Fitting Labor - Management Relations Foundation.

12. That no demand has been made on plaintiffs, or any of them, or any other employer at any time prior to the date of this stipulation, and none is now made by Pipe Trades District Council No. 36, Local Union No. 246, Paul L. Reeves, or the business manager or any officer, agent or employees of said District Council or Local Union other than as set forth in the Exhibits.

13. At all times plaintiffs were and are doing plumbing work in the Counties of Fresno, Madera, Kings and Tulare and employ amongst others members of Local No. 246 in the performance of such work.

14. Neither party to this stipulation stipulates that the facts set forth herein are relevant or material to any issue raised by the complaint or answer.

ROTH AND BAHRs,
/s/ By GEORGE O. BAHRs,
/s/ PAUL K. DOTY,
Attorneys for Plaintiffs.

/s/ P. H. McCARTHY, JR.,
Attorney for Defendants and Each
of Them. [41]

EXHIBIT "A"

Master Contract of Northern California Conference
of Plumbing and Heating Industry and the
Valley Group Negotiating Committee.

This agreement made and entered into this 20th
day of July, 1952 by and between the Employer
and the Union.

Witnesseth:

It is hereby mutually understood and agreed as
follows:

Section 1. Definitions.

(A) The term "Employer" as used in this agree-
ment means the Northern California Conference of
the Plumbing and Heating Industry, Inc. for and
on behalf of the

Associated Plumbing Contractors of Central Cali-
fornia, Inc.,

Associated Plumbing Contractors of Stanislaus
and Merced Counties, Inc.,

Associated Mechanical Contractors of Monterey
County,

Butte County Merchant Plumbers Association,
Heating, Piping and Air Conditioning Contrac-
tor Association of Northern California, Inc.,

Master Plumbers Association of Sacramento, Inc.,

Master Plumbers Association of Stockton,

Bakersfield Associated Plumbing Contractors,

Yuba-Sutter Master Plumbers Association

(hereinafter called Employer Associations) and
Individual Employers members of the Northern
California Conference of the Plumbing and Heat-

ing Industry, Inc., and such Individual Employers members of other associations, whose members are holders of the Licenses set out in Sub-section (C) of this Section, affiliated with the Northern California Conference of the Plumbing and Heating Industry, Inc., (hereinafter called Employer Association) who perform work covered by this agreement, when, as and if such work is performed within the territorial jurisdiction of the Local Unions covered by this agreement.

(B) The term "Union" as used in this agreement means the Valley Group Negotiating Committee acting as the agent of Local Unions No. 62, 228, 246, 365, 437, 447, 460, 492, 503, and 607 of the United Association of the Plumbing and Pipe Fitting Industry of the United States and Canada.

(C) The term "Individual Employer" as used in this agreement means all holders of one or more contractors license C-4, C-16, C-20, C-27, C-36, C-38, C-42, C-57, C-61, issued by the Contractors' State License Board of the State of California who are members of the Employer or any of the Employer Associations set out in sub-section (A) hereof and any non-member holder of one or more such license who may with the written consent of the Union execute this agreement.

(D) The term "Local Union" as used in this agreement means any of the Local Unions enumerated in sub-section (B) hereof and any other Local Union which may hereafter authorize the Valley Group Negotiating Committee in a manner and form acceptable to said committee to act as its

agent and to bind it for the purposes of this agreement.

Section 2. Warranties.

(A) 1. The Employer warrants that it is authorized to bind all Individual Employers who are now members of Northern California Conference of the Plumbing and Heating Industry, Inc., or the members of the Employer Associations set out in Section I (A) hereof, and Employer makes this agreement on its own behalf and on behalf of each of its principals set out in Section I (A) hereof, and on behalf of each of the members of each of the Employer Associations set out in Section I (A) hereof, and the Employer agrees on its behalf and on behalf of each of the Employer Associations set out in Section I (A) hereof that no new or additional members will be admitted to membership in Employer or any Employer Association set out in Section I (A) hereof unless and until such new or additional member, a holder of one or more of the "C" Contractor licenses set out in Section I (A) is by reason of such membership bound by this agreement.

2. It is further agreed that this agreement shall be binding upon the successors of Employer and each of the Employer Associations set out in Section I (A) hereof, and upon the heirs, executors, administrators, successors, purchasers, and assigns of the Individual Employers covered by this agreement.

(B) The Union warrants that it is authorized

to bind the Local Unions set out in Section I (B) hereof.

Section 3. Coverage of Agreement.

(A) Territory Covered.

All of the State of California coming under the territorial jurisdiction of the Local Unions covered by this agreement.

(B) Employees Covered.

This agreement shall apply to and cover the Individual Employers and all workmen employed by the Individual Employers covered hereby who perform any type of work covered by this agreement,

(C) Work Covered.

This agreement shall cover all work coming within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, recognized by the Building and Construction Trades Department of the American Federation of Labor except transportation oil and gas pipeline work as defined in the State-Wide Pipeline Agreement dated July 31, 1950.

Section 4. Recognition of Bargaining Agents.

Union recognized as collective bargaining representative of employees.

The Employer, Employer Associations and the Individual Employers recognize the Union as the sole and exclusive collective bargaining representative of all employees of the Individual Employers performing work covered by this agreement. [44]

* * * * *

Section 10. Joint Conference Board.

(A) It is the intention of the parties to this agreement to settle problems that may arise on a local level; however, in order to bring about general recognition and enforcement of this agreement the parties hereto shall proceed to set up a Joint Conference Board, of sixteen (16) members; eight (8) members shall be selected by the Union and eight (8) by the Employer.

(B) Contemporaneously with the execution of this Agreement the Employer shall notify the Union and the Union shall notify the Employer in writing of their respective Board Members.

(C) The Joint Conference Board shall agree upon and determine the time and place of meeting, the rules of procedure, shall elect a chairman and a secretary from its membership, and shall determine upon all other details necessary to promote and carry on the business for which it is [46] appointed.

The function of the Joint Conference Board shall be:

1. To establish the general recognition and enforcement of the wages, hours, and working conditions of the Agreement.

2. To hear and adjust disputes or differences which may arise in the enforcement or interpretation of this agreement except those under Sections 5, 6, and 14 hereof.

3. To promote the mutual interest of the parties to this agreement.

4. Pending the decision upon any dispute or

grievance, work shall be continued in accordance with the provision of this agreement.

(D) If the Joint Conference Board, after meeting, cannot agree on any matter referred to it, the members thereof shall choose an impartial person who shall act as an additional member of the Joint Conference Board and participate in the making of a decision by a majority of the members. Said decision shall be rendered within ten (10) days after submission and shall be final and binding on all parties hereto. Any expense of employing such impartial person to sit shall be borne equally by the Employer and Union.

(E) The Joint Conference Board shall meet at the time and place set by the Employer if an individual Employer is the complaining party or at the time and place set by the Union if a Local Union or employee is the complaining party. The place of the meeting shall be in the jurisdiction of the Local Union in which the dispute arose. The time shall be not less than five (5) or more than ten (10) days from the date the dispute, complaint or grievance is called to the attention of the other party. Notice of time and place shall be given at the time the dispute, complaint or grievance is called to the attention of the other party. [47]

* * * * *

Section 21. Effective and Termination Date.

This Agreement shall be effective as of the 1st day of July 1952 and remain in effect until midnight the 30th day of June 1953, and shall be renewed from year to year thereafter, unless either

party shall given written notice to the other of a desire to change at least sixty (60) days prior to the date of the expiration of this Agreement.

It is agreed that in the event that either party should exercise its rights under the paragraph last set out above they will for a period of sixty (60) days prior to the 30th day of June, 1953 bargain exclusively with each other with respect to all wage rates, working conditions and hours of employment for the work herein covered. The parties shall meet within 15 days of the receipt of the first notice hereinabove provided. If no agreement has been entered into at the expiration of said sixty (60) days' period, then this agreement shall thereupon cease and terminate and the parties shall be free to negotiate with whomsoever they please. The parties may, by mutual agreement in writing signed by the Employer and Union, extend this Agreement.

In Witness Whereof, the parties hereto have hereunto set their hands and seals by their respective duly authorized officers the day and year first above written.

Union

Valley Group Negotiating Committee

By Paul L. Reeves

Chairman

By Paul L. Reeves

Business Manager

Local Union No. 246

Employer

Northern California Conference of the Plumbing
and Heating Industry, Inc.

By K. Fahy

Vice President

By Nat N. Leas,

Partner

Individual Employer's

Conditioned Air

Firm Name

249 No. H St., Fresno

Address

Employer given copy 10/1/52—PLR. [56]

EXHIBIT "B"

Master Contract of the Valley Group Negotiating
Committee

This Agreement made and entered into this
day of July, 1953, by and between the Individual
Employer signatory hereto and the Union.

Witnesseth:

It is hereby mutually understood and agreed as
follows:

Section 1: Definitions.

(A) The term "Union" as used in this agree-
ment means the Valley Group Negotiating Commit-
tee acting as the agent of Local Unions No. 62, 228,
246, 365, 437, 447, 460, 492, 503, 607 and 662 of
the United Association of Journeymen and Appren-

tices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

(B) The term "Individual Employer" as used in this Agreement means all holders of one or more contractor's license C-4, C-16, C-20, C-27, C-36, C-38, C-42, C-57 and C-61 issued by the Contractors' State License Board of the State of California.

(C) The term "Local Union" as used in this Agreement means any of the Local Unions enumerated in sub-section (A) hereof and any other Local Union which may hereafter authorize the Valley Group Negotiating Committee in a manner and form acceptable to said committee to act as its agent and to bind it for the purpose of this Agreement.

Section 2: Warranties.

1. It is agreed that this agreement shall be binding upon the Union and Local Unions set out in Section 1 (A) hereof, and upon the heirs, executors, administrators, successors, purchasers, and assigns of the Individual Employers covered by this agreement.

2. The Union warrants that it is authorized to bind the Local Union set out in Section 1 (A) hereof.

Section 3: Coverage of Agreement.

(A) Territory Covered

The area covered by this Agreement shall be the following counties in the State of California:

Siskiyou, Modoc, Trinity, Shasta, Lassen, Tehama, Glenn, Butte, San Joaquin, Calaveras, Alpine, Stanislaus, Toulumne, Merced, Mariposa,

Santa Cruz, [57] Plumas, Sierra, Colusa, Sutter, Yuba, Yolo, Sacramento, Nevada, Placer, Amador, Monterey, Madera, Fresno, Kings, Tulare, Mono, Inyo, Kern, El Dorado.

For the purpose of this Agreement, the geographical area above defined shall be known as the Valley Group area.

It is mutually understood and agreed that in the event a Local Union of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada should become a part of the Valley Group Negotiation Committee it may add the territorial jurisdiction of such local union or unions to the territory covered by this Agreement under such terms and conditions as it deems best.

(B) Employees Covered.

This Agreement shall apply to and cover all persons who perform any type of work covered by this Agreement for an Individual Employer signatory hereto.

(C) Work Covered.

This Agreement shall cover all work coming within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, recognized by the Building and Construction Trades Department of the American Federation of Labor except transportation oil and gas pipeline work, as defined in the statewide Pipeline Agreement dated July 31, 1950.

The Individual Employer agrees that all work

covered by this Agreement whether performed by the Individual Employer or by any person, firm or corporation for or on behalf of the Individual Employer by sub-contract or otherwise shall be performed under the terms and conditions of this Agreement.

Section 4: Recognition of Bargaining Agents.

(A) The Individual Employers recognize the Union as the sole and exclusive collective bargaining representative of all employees of the Individual Employers performing work covered by this Agreement.

[Note as Per Stipulation Designating Contents of Record: "Exhibit B unlike Exhibit A contains no provision for a Joint Conference Board or arbitration."] [58]

* * * * *

Section 19: Effective and Termination Date.

This Agreement shall be effective as of the 3rd day of August, 1953 and remain in effect until midnight of the 30th day of June, 1954, and shall be renewed from year to year thereafter, unless either party shall give written notice to the other of a desire to change at least sixty (60) days prior to the date of the expiration of this Agreement.

Since it is anticipated that this Agreement will be executed by more than one Individual Employer, notice to any Individual Employer shall be deemed notice to all Individual Employers signatory [67] hereto.

In Witness Whereof, the parties hereto have

hereunto set their hands and seals by their respective duly authorized officers the day and year first above written.

Union

Valley Group Negotiating Committee

By Paul L. Reeves

Chairman

By

Business Manager

Local Union No.

Individual Employer

.....

.....

..... [68]

EXHIBIT "C"

Agreement Amending Master Contract of the Valley Group Negotiating Committee, Dated July, 1953.

This Agreement, made and entered into the day of April, 1954, by and between the Valley Group Negotiating Committee and the following Master Plumbers Associations as the attorney in fact for the members of each of them and all contractors covered by the Master Agreement for and on whose behalf each of them is authorized to engage in collective bargaining with respect to Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry and any Individual Employer who desires to sign this Agreement.

Whereas, the parties hereto are desirous of avoid-

ing the necessity of re-opening their present agreement for the purpose of negotiating a new agreement, and

Whereas, in the opinion of the parties it is for the best interest of the Plumbing and Pipe Fitting Industry to continue the same agreements:

Now, Therefore, it is hereby mutually understood and agreed by and between the respective parties hereto that the present Master Agreement be and the same is hereby amended as follows: [69]

* * * * *

Add Section 15 (a) to Master Contract:

(A) Where a labor-management set up exists by agreement between the Local Master Plumbers Association, regardless of its name or organization, and a Local Union affiliated with the Committee requiring that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local make the required payment or payments.

(B) The nature, amount and time of such payment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and Local Master Plumbers Association and shall be a part of this agreement.

Add Section 15(a) to Master Contract:

The Individual Employers covered by this agreement consent and agree to be bound by the terms of the effective Health and Welfare Trust Agree-

ment, Pension Trust Agreement and agreement creating any Labor Management set up. [71]

* * * * *

In Witness Whereof, the parties hereto have set their hands and seals this day of April, 1954.

Union

Valley Group Negotiating Committee

By Paul L. Reeves

Chairman

By

Business Manager

Local Union No.....

Individual Employers by

.....

By

.....

By

.....

By [72]

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

MOTION OF DEFENDANTS FOR SUMMARY
JUDGMENT

To Plaintiffs and their attorneys:

Come Now Defendants and each of them and move, and each of them moves the above-entitled

court for summary judgment against plaintiffs and each of them as prayed for in the answer.

This motion is based upon the pleadings and stipulation on file in the above-entitled matter.

/s/ P. H. McCARTHY, JR.,
Attorney for Defendants. [73]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT

Plaintiffs hereby move the court for summary judgment against defendants and each of them as prayed for in the complaint on file herein.

This motion is based upon the pleadings and upon the stipulation on file in the above-entitled matter.

ROTH AND BAHRs,
/s/ By GEORGE O. BAHRs,
/s/ PAUL K. DOTY,
Attorneys for Plaintiffs. [74]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Plaintiffs seek an injunction against defendants to restrain and enjoin them from receiving or accepting any money or thing of value from plaintiffs contrary to the provisions of Section 302, Subsections (A) and (B) of the Labor Management Relations Act, 1947, as Amended. (29 USC Section 186.)

Plaintiffs Conditioned Air and Refrigeration Co., [75] Bell and Hughes, Inc., and Baird Sheet Metal Works are California corporations.

Plaintiffs Earl Griffith and John Dyer are co-partners, doing business as Griffith-Dyer.

All plaintiffs are engaged in businesses which come under the category of plumbing and pipe fitting. Their employees are members of the defendant Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada. The plaintiffs are all members of the Associated Plumbing Contractors of Central California, Inc., which is a member of the Northern California Conference of the Plumbing and Heating Industry.

The defendants are Plumbing and Pipe Fitting Labor-Management Relations Trust; Local Union No. 246 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada; Valley

Group Negotiating Committee and Pipe Trades District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and Paul L. Reeves who is chairman of District Council No. 36 and a trustee of the Labor-Management Relations Foundation hereinbefore mentioned.

That under date of July 20, 1952, the Valley Group Negotiating Committee, predecessor to Pipe Trades District Council No. 36, acting as the agent of Local Union (among others) 246 of the United Association of the Plumbing and Pipe Fitting Industry of the United States and Canada, entered into a collective bargaining agreement with the Northern California Conference of the Plumbing and Heating Industry, Inc., acting on behalf (among others) of the Associated Plumbing Contractors of Central California, Inc. A copy of [76] this agreement is attached as Exhibit "A" to the stipulation of facts filed herein on February 20, 1956. Under this contract the employers, including the plaintiffs, recognized the Union (the Negotiating Committee) as the sole and exclusive collective bargaining representative of all employees performing work covered by the agreement.

That in the summer of 1953 a collective bargaining agreement was entered into between the plaintiffs and the Valley Group Negotiating Committee acting as the agent (among others) of Local Union No. 246. A copy of this agreement is attached to the stipulation of facts marked Exhibit "B". In this

agreement the plaintiffs recognized the Union (Negotiating Committee) as the sole and exclusive collective bargaining representative of its employees performing work under the agreement.

That about the month of April, 1954, the Negotiating Committee demanded that plaintiffs sign agreement amending Exhibit "B" attached to the stipulation. Plaintiffs refused to do so and in about the month of May, 1955, the Negotiating Committee caused the employees of plaintiffs to strike, whereupon plaintiffs signed and executed such amendment, a true copy of which is attached to the stipulation of facts and marked Exhibit "C". The amendment to the contract did not change the recognition provisions of the prior contracts. Exhibit "C" among other things provided as follows:

"Add Section 13 (a) Pension Plan to Master Contract:

(A) A pension trust to be known as The Valley Group Pipe Trades Pension Fund shall be created in accordance with the provisions of the Labor Management Relations Act, 1947, as Amended. [77]

(B) The Pension Trust shall be created prior to July 1, 1954.

(C) Each Individual Employer shall, commencing July 1, 1954 pay into the Valley Group Pipe Trades Pension Fund ten (\$0.10) cents per hour for each hour worked, by each employee employed on work covered by this agreement."

* * * * *

"Add Section 15 (a) to Master Contract:

(A) Where a labor-management set up exists

by agreement between the Local Master Plumbers Association, regardless of its name or organization, and a Local Union affiliated with the Committee requiring that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local make the required payment or payments.

(B) The nature, amount and time of such payment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and Local Master Plumbers Association and shall be a part of this agreement.

Add Section 15(a) to Master Contract:

The Individual Employers covered by this agreement consent and agree to be bound by the terms of the effective Health and Welfare Trust Agreement, Pension Trust Agreement and agreement creating any Labor Management set up."

That on or about the 9th day of February, 1954, Associated Plumbing Contractors of Central California, Inc. [78] and certain individual employers who were licensed contractors under the laws of the State of California and the defendant Local Union No. 246 entered into a trust indenture writing entitled "Plumbing and Pipe Fitting Labor-Management Relations Trust". A copy of this trust is attached to defendants' answer and marked Exhibit "B"; on the second day of August, 1955 said trust was amended and its name was changed to "Plumbing and Pipe Fitting Labor-

Management Relations Foundation". A copy of said amendment is attached to defendants' answer marked Exhibit "C". This amendment increased the Board of Trustees to 12, 6 to be appointed by the Union and 6 to be appointed by the Associated Plumbing Contractors of Central California, Inc. The amendment also added a paragraph (Article VI-A) on the subject of arbitration.

That a collective bargaining agreement dated June 17, 1955, was entered into between the District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (successor to the Valley Group Negotiating Committee) acting as the agent (among others) of Local Union No. 246 and Valley Mechanical Contractors Council, Inc., acting as the agent (among others) of Associated Plumbing Contractors of Central California and other individual employers. A copy of this agreement is attached to defendants' answer marked Exhibit "A". Section 16 of said agreement provides:

"Section 16: Labor-Management Relations.

(A) Where a labor-management set up exists by agreement between the Local Employer, regardless of its name or organization, and a Local Union affiliated with the Union requiring that payment or [79] payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local, make the required payment or payments.

(B) The nature, amount and time of such pay-

ment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and the Local Employer and shall be a part of this agreement.

(C) The Individual Employers agree to be and are bound by all of the terms and conditions of the effective labor-management set ups and the agreement, trust agreement or charter and by-laws creating and governing any such set up.

(D) An Individual Employer who works with the tools of the trade shall be irrevocably presumed for all purposes to have worked no more nor less than 160 hours in any month in which an Individual Employer works with the tools of the trade."

Demand was made by District Council No. 36 upon the plaintiffs to execute a collective bargaining agreement in the form of said Exhibit "A". Plaintiffs have, and each of them has, refused to execute such agreement or to pay into the trust any of the sums specified in accordance with the terms of said agreement except the amounts specified in the fifth cause of action set forth in the complaint. District Council No. 36 is prepared to cause the employees of plaintiffs to strike to obtain the inclusion of Section 16 in said Exhibit "A" in a collective bargaining agreement with the plaintiffs.

The answers of defendants admit that Local [80] Union No. 246 is a representative of employees, but deny that as to the employees here involved it is a "representative" of employees who are in an

industry affecting commerce within the meaning of Section 302 of the Labor Management Relations Act, 1947, as Amended, or at all. Defendants further admit that District Council No. 36 is as to the employees here involved a "representative" of employees within the meaning of said section and that its predecessor, Valley Group Negotiating Committee, was such a "representative" but deny that it or said Committee is or was as to the employees here involved "a representative of employees who are employed in an industry affecting commerce within the meaning of said Section."

Under the stipulation of facts filed herein it was stipulated:

"1. That during the calendar year 1955 plaintiff employers made direct purchases of goods and materials from outside the State of California in the amounts set opposite their names. Plaintiffs made purchases in California of goods and materials originating outside the State of California in the amounts set opposite their names; and plaintiffs furnished services and materials to firms engaged in commerce in the amounts set opposite their names, to wit:

	Direct	Indirect	
Baird Sheet	Purchases	Purchases	Services
Metal Works	\$240,683.24	\$29,389.00	\$10,919.29
Bell and Hughes	127,472.19	68,109.92	46,372.66
Conditioned Air	213,351.25	199,589.16	45,681.06
Griffith-Dyer	161,464.15	47,032.06	49,018.24"

The cause came on for trial on the 8th day of August, 1956. The plaintiffs were represented by

Roth and [81] Bahrs, George O. Bahrs, appearing, and Paul K. Doty. The defendants were represented by P. H. McCarthy, Jr. Each party moved for a summary judgment based upon the pleadings and the stipulation of facts on file. It was stipulated that the motions and the trial on the merits would be submitted based upon the pleadings and the stipulation of facts. The cause was then argued by counsel for the respective parties. All matters were taken under submission by the court.

At the outset, the defendants contend that this court lacks jurisdiction of the cause for two reasons: first, that the dollar volume of interstate business transacted by each plaintiff is too small to adversely affect interstate commerce and that in this type of suit the volume of business of the individual plaintiffs may not be aggregated; second, that the complaint fails to allege that the amount in controversy exceeds the sum or value of \$3,000 as required by Section 1331, U.S.C. Title 28.

It is my conclusion that the volume of business transacted by each plaintiff as set forth in the stipulation is sufficient to establish that the employees of each plaintiff are employed in an industry affecting commerce within the meaning of Section 302 of the Labor Management Relations Act, 1947, as Amended. *NLRB vs. Fainblatt*, 306 U.S. 601. With respect to failure of the complaint to allege that the sum or value in controversy exceeds \$3,000, I am satisfied that under the provisions of Section 302 (e) of the Labor Management Relations Act, 1947, as Amended, such an allegation is not re-

quired. Said section reads as follows:

“The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause [82] shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-110 and 113-115 of this title.”

The fact that the jurisdictional amount of \$3,000 was expressly excluded from the provisions of Sections 301 and 303 of the Labor Management Relations Act, 1947, as Amended, is not persuasive that the failure to make such exclusion in Section 302 operates to include such jurisdictional requirement. Sections 301 and 302 relate to suits for damages by private persons. Section 302 (a) and (b) make it unlawful to do the things proscribed by the provisions thereof. It is public rights which are being protected, and in my opinion the provisions of Section 302(e) grant jurisdiction to this court without regard to the sum or value in controversy if the volume of commerce of each plaintiff is not *de minimis*.

We will now pass to the basic issues which remain. Section 302(a) of the Labor Management Relations Act, 1947, as Amended, provides as follows:

“It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or

other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

Section 302(b) of the same Act provides as follows:

"It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of [83] such employees any money or other thing of value."

Section 302(c) of the same Act states that:

"The provisions of this section shall not be applicable (1) * * *; (2) * * *; (3) * * *; (4) * * *; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be

made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered [84] to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employers are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

Section 302(d) provides as follows:

"Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject

to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both."

There is no dispute between the parties over the facts that the collective bargaining agreement (Exhibits "B" and "C" attached to the stipulation of facts) did and that the collective bargaining agreement (Exhibit "A" attached to the defendants' answer) does provide that each individual employer covered by the collective bargaining [85] agreement, on work covered by said collective bargaining agreement, shall pay into the Plumbing and Pipe Fitting Labor-Management Relations Foundation (a trust) (Exhibits "B" and "C" attached to defendants' answer) ten (\$0.10) cents per hour for each hour worked by each employee of each individual employer covered by the said collective bargaining agreements. It is also clear that the Valley Group Negotiating Committee was a labor organization and was recognized by the employers as the sole and exclusive bargaining representative of all employees of the individual employers performing work covered by the agreement and that District Council No. 36 (the successor of the Committee) a labor organization, was recognized as the sole and exclusive collective bargaining representative of the individual employer performing work covered by the collective bargaining agreement.

The Plumbing and Pipe Fitting Labor-Management Relations Foundation was created by, and its trustors are, Associated Plumbing Contractors, Inc. (a non-profit membership corporation composed of individual employers, members and

non-members of said Association) and Plumbers and Steam Fitters Local Union No. 246 (a labor organization, a local Union).

The collective bargaining agreement (Exhibits "B" and "C" attached to the stipulation) provide "where a labor-management set up exists by agreement between the local Master Plumbers Association, regardless of its name or organization, and a local Union affiliated with the Committee requiring that payment or payments be made, all individual employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local make the required payment or payments," [86] and that "the individual employers covered by this agreement consent and agree to be bound by the terms of the effective Health and Welfare Trust Agreement, pension trust agreement and agreement creating any labor-management set up." The collective bargaining agreement (Exhibit "A" attached to defendants' answer) contains similar provisions.

The Plumbing and Pipe Fitting Labor-Management Relations Foundation does not conform to the requirements of Section 302(c)(5) and the defendants do not contend that it does. The defendants maintain that the trust is not a "representative" within the meaning of the provisions of Section 302; that the trust is a separate entity and that Section 302 does not outlaw or forbid payments to and acceptance by those persons and entities who or which are not "representatives". Defendants further point out that six of the trustees of the

trust are selected by the employers and that six are selected by Local Union No. 246, which fact prevents the Local Union from dominating and controlling the actions of the trustees.

As noted above, Section 302 makes it unlawful for any employer to pay or deliver or to agree to pay or deliver any money or other thing of value to any representative of any of his employees or for any representative of any employees to receive or accept or agree to receive or accept from the employer any money or other thing of value.

The Labor Management Relations Act of 1947, as Amended, states: "The terms 'commerce', 'labor disputes', 'employer', 'employee', 'labor organization', 'representative', 'person', and 'supervisor' shall have the same meaning as when used in subchapter II of this chapter as amended by this chapter." Section 142, subsection 3, U.S.C.A. Title 29.

Section 152, subsection 4, Title 29 U.S.C.A., states: "The term 'representative' includes any individual [87] or labor organization." Subsection 5 of Section 152 states: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The Supreme Court of the United States had occasion to interpret the meaning of the word "representative" as used in Section 302. *U.S. v. Ryan*,

350 U.S. 299. The Court held that the term "representative" in section 302 is not limited to the exclusive bargaining representative of the employees, but includes any person authorized by the employees to act for them in dealings with their employers. The Court also stated that a narrow reading of the term "representative" would substantially defeat the purposes of the Act.

It is conceded that the Valley Group Negotiating Committee was, and that District Council No. 36 is a representative of employees of the plaintiffs within the meaning of Section 302. It is further conceded that Local Union No. 246, one of the founders of the Trust, is a "labor organization". The question remains, however, whether Local Union 246 is a "representative" within the meaning of Section 302. It is true that the Collective Bargaining Agreements state that the employers recognize the Valley Group Negotiating Committee under one contract, and the District Council No. 36 in the other contract, as the exclusive bargaining representative of the employees of the employers. The Court, however, is not bound by such declaration, but must determine from the documents in this case the true and legal status of Local No. 246. [88] In executing the collective bargaining agreements, the Valley Group Negotiating Committee and District Council No. 36 expressly acted as agent of Local 246 and other local unions.

Pertinent parts of the collective bargaining agreement dated July 1, 1955 (Exhibit "A" at-

tached to the answer of the defendants) read as follows:

“Section 1: Definitions.

(A) The term ‘Union’ as used in this agreement means the District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada successor to the Valley Group Negotiating Committee acting as the agent of Local Unions No. 246, 365, 437, 492, 503, 607, and 662 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

* * * * *

(D) The term ‘Local Union’ as used in this Agreement means any of the Local Unions enumerated in subsection (A) hereof and any other Local Union which may hereafter authorize the Union in a manner and form acceptable to said Union to act as its agent and to bind it for the purpose of this agreement.

Section 2: Warranties.

1. It is agreed that this agreement shall be binding upon the Union and Local Unions set out in Section 1 (A) hereof, and upon the Employer, Local Master Plumbers Associations set out and individual employers who are members of any Local Master [89] Plumbers Association set out in Section 1(B) hereof, and upon the heirs, executors, administrators, successors, purchasers, and assigns of the Individual Employers covered by this agreement.

2. The Union warrants that it is authorized to

bind the Local Union set out in Section 1(A) hereof.

* * * * *

Section 5: Union Membership.

(A) All Employees covered by this agreement shall be required as a condition of employment to apply for and become members of and to maintain membership in the Local Union, with jurisdiction within thirty-one days following the beginning of their employment under this agreement or the effective date of this sub-section (A) whichever is the later. This section shall be enforceable to the extent permitted by law.

* * * * *

Section 6.

Subsection (B) Individual Employers must secure all Journeymen and Apprentices through the employment office of the Local Union with jurisdiction at the site of the work, and the Union agrees that the Local Union will furnish competent Journeymen and Apprentices within forty-eight (48) hours when available.

1. The Individual Employer may call for a specific employee by name to be dispatched and the Local Union shall dispatch such employee provided that such employee is available, and [90]

(a) is a preferred employee as defined in Section 6 (A) 1, and

(b) has not been employed outside of the Territorial jurisdiction of the Local Union within which the job site is located within 90 days of the employer calling for him by name except that this

subsection (b) shall not apply to an employee who has worked outside the territorial jurisdiction of the Local Union under paragraph (C) 2 of Section 6 within such 90 day period.

2. In the event that employees with a preference as herein defined are not available to fill vacancies, then the Local Union will undertake to supply the employers with competent and satisfactory employees. Neither as to such undertaking, nor as to any other portion of this agreement, shall any employee be discriminated against by reason of either membership in or non-membership in any Union.

3. The Local Unions will maintain appropriate registration facilities without discrimination either in favor of or against such applicants by reason of membership in our non-membership in any Union.

* * * * *

(C) The provisions with respect to preference in employment by reason of prior employment are subject to the following limitation:

1. That whenever any test is required of any workman by any Individual Employer, the [91] Local Unions upon being requested to furnish men for such test will dispatch only workmen who are experienced in the type of work for which the test is required, unless otherwise expressly agreed to by the Individual Employer.

Before any workman commences the test, he shall be placed on the payroll of the Individual Employer. Any workmen failing to pass the test shall be paid straight time for the test period but in no event less than four (4) hours at straight time.

2. On work contracted for by an Individual Employer outside the jurisdiction of the Local Union in which the Individual Employer's shop is located such Individual Employer may send one man to said job from the territorial jurisdiction of such Local Union; provided, however, that the Individual Employer shall notify the Local Union with territorial jurisdiction over the area in which the job site is located of the name of the Employee and the location of the job prior to the time the Employee is sent into the area and that the Employee before reporting to the job site, shall report to the Local Union having territorial jurisdiction over the area in which the job site is located in person, by telephone, by telegram, or in writing and the Local Union shall dispatch him. Adjacent Local Unions may enter into more liberal local understandings to cover jobs of short duration. [92]

Section 7: Competency and Qualifications.

The Individual Employer shall be the sole judge of the competency of his employees and may discharge any employee for cause. The Local Unions shall be the sole judge of the qualifications of their members for membership in the Local Union.

Section 8: Cessation of Work.

It is mutually agreed and understood that during the period when this agreement is in force and effect the Individual Employer will not lockout his employees and the Union will not authorize any strikes, slow-down or stop work, in any dispute, complaint or grievance arising under the terms and conditions of this agreement, except such disputes,

complaints or grievances as arise out of the failure or refusal of the Individual Employer to comply with the provisions of the Sections 5, 6, 13, 14, 15 and 16 hereof. As to any such Individual Employer who shall fail or refuse to comply with the provisions of these Sections or any of them, so long as such failure or refusal continues, it shall not be a violation of this agreement if the Union or Local Union withdraws its members who are subject hereto from the performance of work for such Individual Employer and such withdrawal for such period shall not be a strike or work stoppage within the terms of this agreement. Any employees so withdrawn or refusing to perform any work as herein provided shall not lose their status as employees but no such employee shall be entitled to claim or receive any wages or other compensation for any period during which he has been so [93] withdrawn or refused to perform work.

* * * * *

Section 10: Jurisdictional Disputes.

In the event of any dispute between Local Unions of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada as to the jurisdiction of the work performed by Individual Employers, such dispute shall be referred to, and settled by the United Association. In the event of any dispute as to jurisdiction of the work covered by the terms of this agreement by reason of any such work being claimed by a union or unions other than the United Association, such dispute shall be

referred and settled in accordance with any procedure or agreement for the settlement of jurisdictional disputes to which the United Association is a party or by which it is bound.

It is agreed that this agreement shall constitute an original assignment of work to the employees covered hereby on work performed by the Individual Employers covered hereby. In either event, the parties hereto agree that there will be no slow-down or stoppage of the work and each agrees that the decisions of the authorities stipulated herein shall be final and binding upon them.

* * * * *

Section 16: Labor-Management Relations.

(A) Where a labor-management set up exists by agreement between the Local Employer, regardless [94] of its name or organization, and a Local Union affiliated with the Union requiring that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local make the required payment or payments.

(B) The nature, amount and time of such payment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and the Local Employer and shall be a part of this agreement.

(C) The Individual Employers agree to be and are bound by all of the terms and conditions of the effective labor-management set ups and the agree-

ment, trust agreement or charter and by-laws creating and governing any such set up.

(D) An Individual Employer who works with the tools of the trade shall be irrevocably presumed for all purposes to have worked no more nor less than 160 hours in any month in which an Individual Employer works with the tools of the trade.

Section 17: Joint Conference Board.

(A) In those areas in which labor-management set ups exist, such labor-management set up shall function as a Joint Conference Board with all the powers, rights, duties and obligations hereinafter lodged in the Joint Conference Board.

(B) It is the intention of the parties to this agreement to settle problems that may arise on a local level; however, in order to bring about [95] general recognition and enforcement of this agreement, the parties hereto shall proceed to set up a Joint Conference Board, of four (4) members. Two (2) members shall be selected by the Local Union and two (2) by the Local Employer.

(C) Contemporaneously with the execution of this agreement the Local Employer shall notify the Local Union and the Local Union shall notify the Local Employer in writing of their respective Board Members.

(D) The Joint Conference Board shall agree upon and determine the time and place of meeting, the rules of procedure, shall elect a chairman and a secretary from its membership, and shall determine upon all other details necessary to promote

.

and carry on the business for which it is appointed.

The function of the Joint Conference Board shall be:

1. To establish the general recognition and enforcement of the wages, hours, and working conditions of the agreement.

2. To hear and adjust disputes or differences which may arise in the enforcement or interpretation of this agreement except those under Sections 5, 6, 13, 14, 15 and 16.

3. To promote the mutual interest of the parties to this agreement.

4. Pending the decision upon any dispute or grievance, work shall be continued in accordance with the provision of this agreement. [96]

(E) If the Joint Conference Board, after meeting, cannot agree on any matter referred to it, the members thereof shall choose an impartial person who shall act as an additional member of the Joint Conference Board and participate in the making of a decision by the majority of the members. Said decision shall be rendered within ten days after submission and shall be final and binding on all parties hereto. Any expense of employing such impartial person to sit shall be borne equally by the Local Employer and Local Union.

(F) The Joint Conference Board shall meet at the time and place set by the Local Employer if an Individual Employer is the complaining party or at the time and place set by the Local Union if a Local Union or employee is the complaining party. The place of the meeting shall be in the jurisdic-

tion of the Local Union in which the dispute arose. The time shall be not less than five (5) days or more then ten (10) days from the date the dispute, complaint or grievance is called to the attention of the other party. Notice of time and place shall be given at the time the dispute, complaint or grievance is called to the attention of the other party."

Similar provisions are contained in the collective bargaining agreements negotiated by the Valley Group Negotiating Committee (Exhibits "A", "B" and "C", attached to stipulation of facts). [97]

I am satisfied from an analysis of the quoted provision of the collective bargaining agreements that Local Union No. 246 is in fact and in law a party to such agreements, and therefore a "representative" of the employees of the plaintiffs within the meaning of Section 302.

Is the Plumbing and Pipe-fitting Labor-Management Relations Foundation a "representative" of the employees of plaintiffs? The Trust recites that "Whereas there is presently no effective machinery whereby the provisions of applicable collective bargaining agreements can be policed and enforced and whereby the general public can be protected from imperfect, improper and unsanitary installation, poor or shoddy materials or poor or improper work and workmanship, and

Whereas, the absence of such effective machinery is producing chaos in the Plumbing and Pipe-fitting industry and is endangering the wages, rates of pay, hours of labor and other conditions of employment of the employees and destroying the trust and confi-

dence of the public in the employers and in the plumbing and pipe-fitting industry,

Now, therefore, to correct this situation, to protect the wages, rates of pay, hours of labor, and other conditions of employment of the employees, to restore the trust and confidence of the public in the employers and the plumbing and pipe-fitting industry, this Trust is created."

The stated purposes of the Trust are to perform and perfect "an organization for the purpose of improving the relationship between the employers and employees making up the plumbing and pipe-fitting industry and the general public, and to enforce the collective bargaining agreement and the provisions thereof covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the [98] Plumbing and Pipe-fitting Industry of the United States and Canada, to protect the wages, rates of pay, hours of labor, and other conditions of employment of the employees in the plumbing and pipe-fitting industry and to protect the general public from imperfect, improper and unsanitary installations, poor or shoddy materials and poor or improper work and workmanship."

The only specific purposes of the Trust are to enforce the collective bargaining agreement and the provisions thereof, covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada, and to protect the wages, rates of pay, hours of labor and

other conditions of employment of the employees in the plumbing and pipe-fitting industry. The other stated purposes are vague and uncertain.

The Trust agreement states that the Board of Trustees is authorized to, and shall have the power to pay out of the assets of the Trust, at the sole and exclusive discretion of the trustees, for, among other things, "to protect the wages, rates of pay, hours of employment, and other conditions of employment of the employees in the plumbing and pipe-fitting industry, * * to enforce the collective bargaining agreements and the provisions thereof, covering work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada." The Board of Trustees is authorized "to employ such executive, administrative, accounting, clerical, secretarial and legal personnel and other employees and assistants, as may be necessary in connection with the carrying out of the Trust and to pay or cause to be paid, out of the Trust the compensation and [99] expenses of such personnel and assistants, the cost of office space, furnishings and supplies and other expenses of the Trust."

It must be presumed that the Trust will carry out the specifically stated provisions for which it was formed, and which are above quoted. The Trust comes within the term "labor organization" as defined in Subsection 5 of Section 152, Title 29 U.S.C.A., and is a "representative" of the employees under Section 4 of Section 152. It is my view

that the Trust is a "representative" of the employees of the plaintiffs. It is clear under the decision of *United States vs. Ryan*, (*supra*) that a "representative" is not limited to the exclusive bargaining agent of the employees. The fact that the Trust agreement contains an arbitration clause cannot operate to validate acts prohibited by Section 302.

It is clear to me that if the plaintiffs were required to make the payments in question to Local Union 246, such payments and receipt would be forbidden by Section 302. The fact that the payments are to be made to the Trust does not, in my opinion, alter the situation, since the Trust under the documents under review, is likewise a "representative" of the employees of the plaintiffs. Furthermore, it is my view that the prohibition in Section 302 forbidding the payment of money or other thing of value to a representative, or the receipt thereof by a representative, is not limited to cash or tangible property. The expression, "other thing of value" would include the benefits flowing from the use or application of the money paid. Under the Trust in question, the payments required to be made by the plaintiffs are to be devoted to enforcement of the collective bargaining agreements, to protect wages, hours of labor, conditions of employment, and to hire personnel, furnish office space, et cetera, to carry [100] out such purposes. It is my view that this constitutes payment of a thing of value to Local 246. The fact that the control of the Trust is equally divided between the employers and the representatives of the employees

does not change the situation in view of the provisions of the Trust Agreement.

The defendants have cited the cases of *United Marine Division v. Essex Transportation Company*, 216 Fed.2d 410; *Rice-Stix Dry Goods Company v. St. Louis Labor Health Institute*, D.C.E. Mo. 22 LRRM 2528; *People v. Cilento*, 143 N.Y.S. 2d 705; and *Bay Area Painters and Decorators Joint Committee, Inc. v. Orack*, 102 C A 2d 81. In the *Essex* case, payments by the employer were to be made to six trustees of a welfare fund. From aught that appears in the opinion of the Court the Trust providing for the welfare fund was in strict compliance with the requirement of Section 302(c)(5). Admittedly, the Trust here involved does not so comply. In the *Rice-Stix* case, the Court concluded that the Health Institute was a corporation independent of the labor union which was a representative of the bargaining unit of the employees of the plaintiff. The fund created was to be used for health purposes. In neither of the cases was there a trust agreement containing provisions such as the quoted provisions of the Trust here in question. The *Cilento* case involved a construction of the Penal Statute of the State of New York, and in my opinion, the correct decision was reached under the facts and the applicable law.

In the *Orack* case, the Court determined that the agreement in question did not constitute a monopoly or a restraint of trade under the law of the State of California. It did not involve Section 302 of Title 29 U.S.C.A. [101]

My attention has been called to a memorandum order made by the Honorable Edward P. Murphy, United States District Judge, Northern District of California, in the case of Sheet Metal Contractors Association of San Francisco vs. Sheet Metal Workers International Association, No. 35206. In his memorandum order Judge Murphy stated that the purposes for which the Board [Joint Industry Board] was established are not entirely clear. I have had the opportunity of examining the Trust Agreement establishing the Joint Industry Board. I find nothing in the agreement to indicate that it was any purpose of the Joint Industry Board to enforce the collective bargaining agreement between the Union and the employees of the plaintiff or to protect the wages, rates of pay, hours of labor or other conditions of employment of such employees, or to expend its fund for such purposes.

I am aware that labor-management plans are to be encouraged. I recognize that great strides have been made in such fields to the benefit of labor, management and the public. As a Judge, however, as stated by counsel for the defendant, my duty is to determine whether the cloth is cut to fit the pattern laid down by the Legislature. It is not for the Court to push or pull the pattern to fit the cloth already cut or to trim the cloth already cut to fit the pattern.

Accordingly, the motions for summary judgment are denied and judgment is ordered for the plaintiffs.

Counsel for the plaintiffs are directed to prepare and file findings of fact, conclusions of law, and form of judgment, in accordance with the rules of this Court. [102]

The Clerk of this Court is directed to forthwith mail copies of this order to respective counsel.

Dated: October 23, 1956.

/s/ GILBERT H. JERTBERG,
Judge of the U. S. District Court.

[Endorsed]: Filed Oct. 24, 1956.

In The United States District Court, Southern
District of California, Northern Division

No. 1517 ND

CONDITIONED AIR AND REFRIGERATION
CO., a California corporation; BELL AND
HUGHES, INC., a California corporation;
BAIRD SHEET METAL WORKS, a Cali-
fornia corporation; EARL GRIFFITH AND
JOHN DYER, a co-partnership doing business
under the name of GRIFFITH-DYER,

Plaintiffs,

vs.

PLUMBING AND PIPE FITTING LABOR-
MANAGEMENT RELATIONS TRUST; LO-
CAL UNION NO. 246 OF THE UNITED
ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA; PIPE
TRADES DISTRICT COUNCIL NO. 36 OF
THE UNITED ASSOCIATION OF JOUR-
NEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUS-
TRY OF THE UNITED STATES AND
CANADA; VALLEY GROUP NEGOTIAT-
ING COMMITTEE; and PAUL L. REEVES,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT

This cause came on to be heard on the 8th day

of August, 1956, before the court sitting without a jury.

By stipulation of counsel in open court the parties submitted this matter to the court for final decision and judgment on the record made before the court on the cross-motions of the [104] parties for summary judgment, both parties electing to waive the introduction of further evidence.

The evidence submitted consists of the written Stipulation of Facts with the exhibits which are made a part thereof, together with allegations of fact not denied or expressly admitted by the pleadings.

After a full and careful consideration of the evidence and the briefs and oral arguments of the parties the court makes and enters the following findings of fact and conclusions of law:

Findings of Fact

1. All plaintiffs are engaged in the plumbing and pipe fitting business in Fresno, California.

In the performance of such business plaintiffs employ journeymen and apprentice plumbers and pipe fitters who at all times were and are members of defendant Union Local No. 246.

2. During the calendar year 1955 plaintiff employers made direct purchases of goods and materials from outside of the State of California in the amounts set opposite their names. During said year plaintiffs made purchases in California of good and materials originating outside the State of California in the amounts set opposite their names;

and plaintiffs furnished services and materials to firms engaged in commerce in the amounts set opposite their names, to-wit:

	Direct Purchases	Indirect Purchases	Services
Baird Sheet Metal Works	\$240,683.24	\$29,389.00	\$10,919.29
Bell and Hughes, Inc.	127,472.19	68,109.92	46,372.66
Conditioned Air and Refrigeration	213,351.25	199,589.16	45,681.06
Griffith-Dyer	161,464.15	47,032.06	49,018.24

3. Under date of July 20, 1952, the Valley Group Negotiating Committee, predecessor to Pipe Trades District Council No. 36, acting as the agent of Local Union No. 246, and other Local Unions, entered into a collective bargaining agreement with Northern [105] California Conference of Plumbing and Heating Industry, Inc., which said Conference was acting on behalf (among others) of the Associated Plumbing Contractors of Central California, Inc. A copy of said agreement is attached as Exhibit "A" to the Stipulation of Facts on file herein.

4. In the summer of 1953 a collective bargaining agreement was entered into between plaintiffs and the Valley Group Negotiating Committee acting as agent of Local Union No. 246 and other Local Unions. A copy of said agreement is attached to the Stipulation of Facts on file herein marked Exhibit "B."

5. About the month of April, 1954 said Valley Group Negotiating Committee demanded that plaintiffs sign an agreement amending said Exhibit "B." The document which said Committee demanded that plaintiffs sign is Exhibit "C" attached to the Stipulation of Facts on file herein. Plaintiffs re-

fused to sign said amendment and in about the month of May, 1955 said Valley Group Negotiating Committee caused the employees of plaintiffs to strike, whereupon plaintiffs signed and executed such agreement. Said Exhibit "C" provided in part as follows:

"Add Section 15 (a) to Master Contract:

"(A) Where a labor-management set up exists by agreement between the Local Master Plumbers Association, regardless of its name or organization, and a Local Union affiliated with the Committee requiring that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local make the required payment or payments.

"(B) The nature, amount and time of such payment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and Local Master Plumbers Association and shall be a part of this agreement.

"Add Section 15 (a) to Master Contract:

"The Individual Employers covered by this agreement consent and agree to be bound by the terms of the effective Health and Welfare Trust Agreement, Pension Trust Agreement and agreement creating any Labor Management set up." [106]

6. On or about the 9th day of February, 1954 Associated Plumbing Contractors of Central Cali-

fornia, Inc., and certain individual employers who were licensed contractors under the laws of the State of California, and the defendant Local Union No. 246, entered into a trust indenture in writing entitled "Plumbing and Pipe Fitting Labor-Management Relations Trust." A copy of said Trust Agreement is attached to the defendants' answer and marked Exhibit "B"; on the 2nd day of August, 1955 said trust was amended and its name was changed to "Plumbing and Pipe Fitting Labor-Management Relations Foundation." A copy of said amendment is attached to defendants' answer marked Exhibit "C."

7. A collective bargaining agreement dated June 17, 1955, was entered into between the District Council No. 36 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (successor to the Valley Group Negotiating Committee) acting as the agent (among others) of Local Union No. 246 and Valley Mechanical Contractors Council, Inc., acting as the agent (among others) of Associated Plumbing Contractors of Central California and other individual employers. A copy of this agreement is attached to defendants' answer marked Exhibit "A." Section 16 of said agreement provides:

"Section 16: Labor-Management Relations.

"(A) Where a labor-management set up exists by agreement between the Local Employer, regardless of its name or organization, and a Local Union affiliated with the Union requir-

ing that payment or payments be made, all Individual Employers covered by this agreement shall, if and when they perform work in the territorial jurisdiction of such Local, make the required payment or payments.

“(B) The nature, amount and time of such payment and the territorial jurisdiction of the Local Union shall be set forth in an appendix to this agreement certified by the Local Union and the Local Employer and shall be a part of this agreement.

“(C) The Individual Employers agree to be and are bound by all of the terms and conditions of the effective labor-management set ups and the agreement, trust agreement or charter and by-laws creating and governing any such set up. [107]

“(D) An Individual Employer who works with the tools of the trade shall be irrevocably presumed for all purposes to have worked no more nor less than 160 hours in any month in which an Individual Employer works with the tools of the trade.”

8. Demand was made by District Council No. 36 upon the plaintiffs to execute a collective bargaining agreement in the form of said Exhibit “A” attached to the answer on file herein. Plaintiffs have, and each of them had, refused to execute such agreement or to pay into the trust any of the sums specified in accordance with the terms of said agreement except the amounts specified in the fifth cause of action set forth in the complaint. District Coun-

cil No. 36 is prepared to cause the employees of plaintiffs to strike to obtain the inclusion of Section 16 in said Exhibit "A" in a collective bargaining agreement with the plaintiffs.

Conclusions of Law

1. This Court has jurisdiction of the subject matter and the parties to this action.

2. Plaintiffs are engaged in a business or industry affecting commerce within this district and plaintiffs are employers of employees employed in an industry affecting commerce within the meaning of Section 302 LMRA 1947.

3. Defendants Pipe Trades District Council No. 36, successor to Valley Group Negotiating Committee, Local Union No. 246, and Plumbing and Pipe Fitting Labor-Management Relations Foundation, successor to Plumbing and Pipe Fitting Labor-Management Relations Trust, are representatives of employees who are employed in an industry affecting commerce within the meaning of Section 302 LMRA 1947; and said defendants are representatives of the employees of plaintiffs.

4. Labor-Management Relations Foundation is a representative of the employees of plaintiffs, and payments to Labor-Management Relations Foundation by plaintiffs or any of them constitute payments of monies or other things of value by employers [108] to a representative of their employees employed in an industry affecting commerce.

5. In addition thereto defendant Local Union No. 246 is also a representative of the employees of

plaintiffs. Local Union No. 246 has a beneficial interest in, and partial control over, the disposition of the assets and property of Labor-Management Relations Foundation. Payments by plaintiffs to Labor-Management Relations Foundation constitute payment of monies or other thing of value to Local No. 246 and thereby constitute payment of money or other thing of value by employers to a representative of their employees engaged in an industry affecting commerce.

6. The Trust Agreement of the Plumbing and Pipe Fitting Labor-Management Relations Foundation states that the Board of Trustees is authorized to, and shall have the power to, pay out of the assets of the trust at the sole and exclusive discretion of the trustees for the following purposes among others: "To enforce the collective bargaining agreement and the provisions thereof," and "to protect the wages, rates of pay, hours of labor, and other conditions of employment of the employees in the plumbing and pipe fitting industry * * *." The expenditure of trust monies for the purposes above enumerated relieves Local Union No. 246 of the expenditures of monies for said purposes and to such extent constitutes the payment of monies or other thing of value to Local Union No. 246.

7. None of said payments are for any of the purposes enumerated or permitted by, or under the provisions of, Section 302 LMRA 1947.

8. Plaintiff employers should be enjoined from paying to defendant Labor-Management Relations Foundation, and said defendant Labor-Manage-

ment Relations Foundation should be enjoined from receiving or accepting any payments of monies or other thing of value from plaintiffs. [109]

9. Plaintiff employers should be enjoined from paying to defendant Local Union No. 246, and defendant Local Union No. 246 should be enjoined from receiving or accepting any payments or monies or other thing of value from plaintiffs except for the purposes specified and set forth in Section 302 (c) LMRA 1947.

Judgment

In accordance with the foregoing findings of fact and conclusions of law it is Ordered, Adjudged and Decreed:

1. That plaintiffs, Conditioned Air and Refrigeration Co., a California corporation, Bell and Hughes, Inc., a California corporation, Baird Sheet Metal Works, a California corporation, and Earl Griffith and John Dyer, a co-partnership doing business under the name of Griffith-Dyer, be and they are hereby enjoined and restrained from paying any monies or other thing of value to defendant Labor-Management Relations Foundation.

2. That defendant Labor-Management Relations Foundation be enjoined and restrained from receiving or accepting any payments of monies or other thing of value from plaintiffs, Conditioned Air and Refrigeration Co., a California corporation, Bell and Hughes, Inc., a California corporation, Baird Sheet Metal Works, a California corporation, and

Earl Griffith and John Dyer, a co-partnership doing business under the name of Griffith-Dyer.

3. That plaintiffs, Conditioned Air and Refrigeration Co., a California corporation, Bell and Hughes, Inc., a California corporation, Baird Sheet Metal Works, a California corporation, and Earl Griffith and John Dyer, a co-partnership doing business under the name of Griffith-Dyer be and they are hereby enjoined and restrained from making any payments of monies or other thing of value to defendant Local Union No. 246 except for the purposes specified and set forth in Section 302 (c) LMRA 1947. [110]

4. That Local Union No. 246 be enjoined and restrained from receiving or accepting any payments of monies or other thing of value from plaintiffs, Conditioned Air and Refrigeration Co., a California corporation, Bell and Hughes, Inc., a California corporation, Baird Sheet Metal Works, a California corporation, and Earl Griffith and John Dyer, a co-partnership doing business under the name of Griffith-Dyer, except for the purposes specified and set forth in Section 302 (c) LMRA 1947.

5. The costs of this action are taxed to defendants, and defendants Labor-Management Relations Foundation and Local Union No. 246 are hereby ordered to pay plaintiffs their costs of suit.

6. It Is Further Ordered, Adjudged and Decreed that this judgment shall be stayed pending the filing of an appeal by defendants within the time allowed by law, and if such appeal shall be filed by

defendants this judgment shall be further stayed until decision thereof by the United States Court of Appeals for the Ninth Circuit. If no appeal is filed by defendants or any of them within the time allowed by law, or if such appeal is filed and the decision herein is affirmed by the United States Court of Appeals then and thereupon this judgment shall be in full force and effect.

Dated: November 14, 1956.

/s/ GILBERT H. JERTBERG,
Judge of the U. S. District Court.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Lodged Nov. 2, 1956. Docketed and Entered Nov. 19, 1956. Filed Nov. 14, 1956. [111]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that defendants, Plumbing and Pipe Fitting Labor-Management Relations Foundation, named in the caption herein as Plumbing and Pipe Fitting Labor-Management Relations Trust, Local Union No. 246 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe [112] Fitting Industry of the United States and Canada; Pipe Trades District Council No. 36 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and

Paul L. Reeves, and each of them, does hereby appeal to the United States Court of Appeal for the Ninth Circuit from the granting of plaintiffs' motion for summary judgment and the denial of defendants' motion for summary judgment and from the judgment entered herein on the 19th day of November, 1956, and the whole thereof.

Dated: December 3, 1956.

/s/ P. H. McCARTHY, JR.,
Attorney for Appellants.

[Endorsed]: Filed Dec. 13, 1956. [113]

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED UPON ON APPEAL

Plumbing and Pipe Fitting Labor-Management Relations Foundation, named in the caption herein as Plumbing and Pipe Fitting Labor-Management Relations Trust, Local Union No. 246 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Pipe Trades District Council No. 36 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting [114] Industry of the United States and Canada, and Paul L. Reeves, and each of them, defendants and appellants above-named, state pursuant to Rule 75(d) of the Federal Rules of Civil Procedure that

the following points will be relied upon on appeal from the Judgment entered herein.

1. The Court erred in granting plaintiffs' motion for summary judgment, and denying defendants' motion for summary judgment.
2. The Court erred in its Findings of Fact.
3. The Court erred in its Conclusions of Law.
4. The Court erred in its Judgment.

/s/ P. H. McCARTHY, JR.,

Attorney for Appellant Defendants.

[Endorsed]: Filed Dec. 13, 1956. [115]

[Title of District Court and Cause.]

STIPULATION DESIGNATING CONTENTS
OF RECORD ON APPEAL AND ORDER
THEREON

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto that the designated parts of the record of the above-entitled action in the above-entitled Court, hereinafter set out, are the material and relevant parts and shall be the record on appeal in the above-entitled action:

1. Notice of Appeal.
2. Statement of Points Relied Upon on Appeal.
3. Complaint for Injunction.
4. Answer including Exhibits B and C. Exhibit A, a printed booklet is to be transmitted to the

Appellate Court and a copy substituted for the files of the above-entitled Court.

5. Stipulation of Facts,

(a) Also the following portions of Exhibit A, attached to Stipulation of Facts.

Page 1 commencing "Master Contract" through page 3, line 15, ending in "work covered by this agreement."

Page 5 commencing "Section 10" through page 6, line 33, ending in "of the other party."

Page 14 commencing "Section 21" through to the end of the Agreement including signatures.

(b) Also the following portions of Exhibit B, attached to Stipulation of Facts.

Page 1 commencing "Master Contract" through page 2, line 41, ending in "this agreement."

Statement as follows:

"Exhibit B unlike Exhibit A contains no provisions for a Joint Conference Board or arbitration."

Page 11 commencing with "Section 19" through to the end of the agreement, including signature lines.

(c) Also the following portions of Exhibit C, attached to Stipulation of Facts.

Page 1 commencing "Agreement Amending Master Contract" through line 19 ending in "Master Agreement be and the same is hereby amended as follows."

Page 3 commencing line 10 with "Add Section 15(a) to Master Contract" through line 26 ending in "Labor Management set up."

Page 4 commencing line 16 with "In Witness

Whereof" to the end of the agreement including signature lines.

6. Plaintiffs' and Defendants' Motions for Summary Judgment.

7. Memorandum and Order. [117]

8. Findings of Fact, Conclusions of Law and Judgment.

Dated: December 12, 1956.

/s/ P. H. McCARTHY, JR.,
Attorney for Appellant Defendants.

/s/ GEORGE O. BAHRs,
Attorney for Appellee Plaintiffs.

So Ordered:

Dated: December 13, 1956.

/s/ GILBERT H. JERTBERG,
U. S. District Court Judge.

[Endorsed]: Filed Dec. 13, 1956. [118]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 118, inclusive, containing the original

Complaint;

Answer;

Stipulation of Facts;

Motion of Defendants for Summary Judgment;

Motion of Plaintiffs for Summary Judgment;

Memorandum & Order of Court;

Findings of Fact, Conclusions of Law & Judgment;

Notice of Appeal;

Statement of Points Relied Upon on Appeal;

Stipulation Designating Contents of Record on Appeal; & Order Thereon;

I further certify that my fee for preparing the foregoing record amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 20th day of February, 1957.

[Seal] JOHN A. CHILDRESS,
 Clerk,

/s/ By CHARLES E. JONES,
 Deputy.

[Endorsed]: No. 15445. United States Court of Appeals for the Ninth Circuit. Plumbing and Pipe Fitting Labor-Management Relations Trust, et al., Appellants, vs. Conditioned Air and Refrigeration Co., a corporation, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: February 21, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

